



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

**HOUSE OF
REPRESENTATIVES**

STANDING COMMITTEE ON ABORIGINAL AND TORRES
STRAIT ISLANDER AFFAIRS

**Reference: Involvement of Indigenous juveniles and young adults in the criminal
justice system**

WEDNESDAY, 3 MARCH 2010

MELBOURNE

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**HOUSE OF REPRESENTATIVES STANDING
COMMITTEE ON ABORIGINAL AND TORRES STRAIT ISLANDER AFFAIRS**

Wednesday, 3 March 2010

Members: Mr Debus (*Chair*), Mr Laming (*Deputy Chair*), Mr Andrews, Ms Campbell, Ms Rea, Mr Kelvin Thomson, Mr Trevor, Mr Turnour and Mrs Vale

Members in attendance: Mr Debus, Mr Kelvin Thomson and Mrs Vale

Terms of reference for the inquiry:

To inquire into and report on:

High levels of involvement of Indigenous juveniles and young adults in the criminal justice system. With a particular focus on prevention and early intervention, the Committee will identify:

- How the development of social norms and behaviours for Indigenous juveniles and young adults can lead to positive social engagement;
- The impact that alcohol use and other substance abuse has on the level of Indigenous juvenile and young adult involvement in the criminal justice system and how health and justice authorities can work together to address this;
- Any initiatives which would improve the effectiveness of the education system in contributing to reducing the levels of involvement of Indigenous juveniles and young adults with the criminal justice system;
- The effectiveness of arrangements for transitioning from education to work and how the effectiveness of the 'learn or earn' concept can be maximised;
- Best practice examples of programs that support diversion of Indigenous people from juvenile detention centres and crime, and provide support for those returning from such centres;
- The scope for the clearer responsibilities within and between government jurisdictions to achieve better co-ordinated and targeted service provision for Indigenous juveniles and young adults in the justice system;
- The extent to which current preventative programs across government jurisdictions are aligned against common goals to improve the health and emotional well-being of Indigenous adolescents, any gaps or duplication in effort, and recommendations for their modification or enhancement.

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Committee met at 9.01 am**EAMES, The Hon. Geoffrey, AM, QC, Private capacity**

CHAIR (Mr Debus)—I declare open this public hearing of the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs inquiry into the high level of involvement of Indigenous juveniles and young adults in the criminal justice system. I acknowledge the traditional custodians of this land and pay respects to their elders past, present and future. I also acknowledge the Aboriginal people who now reside in this area.

The meetings of this committee are formal proceedings of the parliament, and everything said should therefore be factual and honest. It can be considered a serious matter to attempt to mislead the committee. Today we will be hearing from two witnesses followed by a roundtable hearing. This hearing is open to the public and a transcript of what is said will be placed on the committee's website.

It is my great pleasure now to call on Mr Geoffrey Eames to give evidence. I want to tell the inquiry, and for the record, that Geoffrey Eames is a most distinguished legal practitioner who was, in a bygone era when I first came across him, a legal officer with various Aboriginal organisations in the Northern Territory. He has more recently been a judge of the Victorian Court of Appeal, but is here perhaps in particular because he was senior counsel assisting the Royal Commission into Aboriginal Deaths in Custody—without question the most important inquiry that has been conducted into the sorts of matters we are talking about today. It is my pleasure to welcome you here, Mr Eames.

Mr Eames—Thank you, Mr Chairman. I thank the committee for the invitation to speak in these sessions. As I pointed out when I accepted the invitation, I do not claim to have current personal experience of remote Indigenous communities nor of the interaction between Indigenous juveniles in those communities and the criminal justice system. Whilst I have maintained a longstanding friendship and association with members of the Aboriginal community in Victoria and elsewhere my most recent contact with Indigenous people in the Northern Territory was when I sat as an acting justice of the Supreme Court in 2007 and 2008.

In seeking to assist the committee with respect to issues raised by its terms of reference, I will confine myself to discussing matters on which my experience as a judge and my past experience in working with Indigenous communities may have some continuing relevance and value. I do not speak on behalf of anyone else and, in particular, I do not speak on behalf of the supreme courts of Victoria or the Northern Territory.

The first observation I wish to make concern the high rates of Indigenous imprisonment. The most recent figures I have from the Australian Institute of Criminology show that the percentage of the prison population who are Indigenous rose from 14.4 per cent in 1991, when the Royal Commission into Aboriginal Deaths in Custody delivered its report, to 24.4 per cent in 2007. The Victorian rate rose from 3.9 per cent to 5.7 per cent over that period—the least alarming increase in the country—although the upward trend is still a matter for concern. I have tabled the statistics to which I am referring in the paper which I am delivering this morning. The fact that the Victorian figures show some degree of containment nonetheless suggests that some of the programs in this state may be working, as I believe they are. I am happy to discuss those

programs later if required but I understand the committee will be hearing from people who are much more familiar with them than I.

The juvenile justice statistics were even more depressing. Whilst between 1981 and 2006 the overall incarceration rate for both Indigenous and non-Indigenous juveniles had declined by 55 per cent, as at 30 June 2006, 51 per cent of the then 330 juveniles in custody were Indigenous. The Indigenous incarceration rate was 21 times that of non-Indigenous juveniles.

As Dr Don Weatherburn of the New South Wales Bureau of Crime Statistics and Research wrote in 2003, 'The high rate of Indigenous imprisonment is due to the high rate of Indigenous offending.' His research showed that Aboriginal people convicted of crimes of violence in New South Wales were 82 per cent more likely to have prior convictions for violence than non-Indigenous defendants. Likewise Dr Weatherburn reported in 2006 that research showed that there was little support for the hypothesis that the Indigenous imprisonment rates were a reflection of racial discrimination within the criminal justice system. The royal commission came to the same conclusion in 1991.

The royal commission was concerned to reduce Indigenous deaths in custody, particularly in police custody. The commission found that Indigenous people were not dying in custody at a higher rate than non-Indigenous prisoners but that they were being imprisoned at a much greater rate than non-Indigenous people. The commission reported:

... the more fundamental causes for the over-representation of Aboriginal people in custody are not to be found in the criminal justice system but in those factors which bring Aboriginal people into conflict with the criminal justice system in the first place ... the most significant contributing factor is the disadvantaged and unequal position in which Aboriginal people find themselves in the society—socially, economically and culturally.

Those observations remain true today. The commission said that the underlying issues—factors such as unemployment, educational disadvantage, inadequate housing, alcohol and drug abuse et cetera—had to be addressed if the cycle of crime was not to be repeated generation after generation.

In sentencing Indigenous offenders judicial officers have a statutory and common-law obligation to identify factors that might explain and mitigate the offending, just as they have an obligation to identify factors that aggravate the offending. Whilst protection of the community is the paramount consideration in sentencing, the prospects of rehabilitation of the offender, including signs of genuine remorse, must be fully explored and evaluated. In the case of Indigenous offenders who are convicted on very serious offences—which will often be committed against Indigenous victims—and who have many prior convictions, there is a danger that sentencing judges and magistrates will devalue the importance of a severely disadvantaged background when considering the contributing factors which gave rise to the offence.

There is very little public and media encouragement for judges or magistrates to place weight on an Indigenous offender's prospects of rehabilitation. Initiatives such as the Koori Court, which continues to present the best prospect for reducing the rate of Indigenous recidivism, are often treated with contempt by media commentators. The public mood is for retribution, not rehabilitation. In the face of hostile media reporting of sentencing decisions, judges and magistrates must not be discouraged from continuing to place importance on the rehabilitation

prospects of Indigenous offenders. There is a significant public interest in addressing recidivism among Indigenous offenders, and all Indigenous offenders are entitled to have their background of disadvantage fully and properly explored and evaluated.

The Royal Commission into Aboriginal Deaths in Custody reported 19 years ago. Judges and magistrates are now sentencing a generation of offenders who were not born, or were children, when the report was delivered to government. One has to ask: in 19 years, how successfully have the underlying issues been addressed? When one considers the backgrounds of offenders who have appeared in court in recent high profile cases of violent crimes, whether on remote Indigenous communities, such as the offences reported in the Court of Appeal decision in Queensland of *R v KU* and others, or in less remote areas, such as the case considered by the Victorian Court of Appeal in *DPP v Terrick* and others, one can see that the reality is that not a lot has changed in 19 years.

One response, which I have heard argued, is that the Indigenous and non-Indigenous communities should simply give up on the present generation of youthful offenders—simply lock them away, with increasingly lengthy sentences. I would be surprised if that approach was favoured by most people on Indigenous communities, notwithstanding that they comprise the actual or potential victims of crime. In my experience Aboriginal communities frequently could not understand why justice was so long delayed, especially in indictable offence cases, and then resulted in offenders going to prison for long sentences.

In his book *The Politics of Suffering*, which I will later refer to, Dr Peter Sutton contends that Aboriginal people do not share non-Indigenous attitudes to justice and remorse. When there is a dispute on a community then what matters, he says, is not justice but, rather, a return to equilibrium. He says that:

Remorse scarcely enters the picture, nor does conscience, nor does a feeling of guilt. Those who will these states onto traditional Indigenous minds are projecting their own ethnocentrism in one of those many late refinements of the colonial impulses that are based on a misplaced good will ...

Sutton says that notions of inward blame are foreign to Indigenous people. He says:

In Aboriginal languages there is no word for ‘sorry’, in the sense of a self-accusing apology ...

He says that words that may be translated as ‘apology’ tend to be about restoring relations to good terms and ‘not to any admission of blame or guilt’.

I am not sure that I accept that Aboriginal people have no sense of remorse. Certainly my own experience and that of the Koori courts would suggest otherwise, but Sutton’s view that Aboriginal people favour a return to equilibrium is consistent with my own experience—albeit now dated—that long prison sentences are not favoured as a response even for major crimes.

In a speech I gave in 2008—which I have supplied to the committee—I discussed the judgment in a case by the Court of Appeal in Queensland in which the judges increased sentences of offenders who raped a 10-year-old girl. I observed that it was an opportunity lost to have heard directly from the community at Aurukun about their expectations of the criminal justice system. The legislation in Queensland would have permitted the courts to have done

precisely that. Judges in the Northern Territory have consulted communities over many years. As a lawyer employed by the Aboriginal Legal Service I usually met with the community prior to circuit courts commencing and I would facilitate their views being presented in court. That seemed to work well, although it sometimes threw up ethical conundrums. The judge in the Aurukun case, who was strongly criticised in that case, regularly met with the community and was criticised for so doing. In my view, the practice of formal and informal consultations ought to be encouraged.

The response to violence in Indigenous communities has been presented by some as a choice between care for victims or appeasement of vested interest groups. In *The Politics of Suffering*, Dr Sutton, a highly experienced and respected anthropologist, provides an important description and analysis of the horrifying levels of violence on some Indigenous communities. After a lifetime of work supporting Indigenous people, he has many valuable insights to offer, but his analysis suffers from a simplistic and, in my view, divisive assertion that concern for the welfare and safety of Indigenous people in remote communities is inconsistent with pursuit of what he calls a 'symbolic and rights agenda'. Those who pursue that agenda, which addresses issues such as reconciliation, are dismissed as careerists and the purveyors of unscientific mumbo jumbo.

Sutton says:

... the political glamour attracted by those who struggle for rights and justice has long outshone the small glow emitted by those who are in the coalface caring business, the ones who dress the wounds of battered women in remote area clinics at three o'clock on Sunday mornings, or who work to get petrol sniffers back on track out in the Tanami desert.

He says:

We have long been told that the emotional and physical health of Indigenous people will not improve until their social justice and property justice and treaty needs have been met, and, by implication, that the heart of the people's problems and solutions lies in politics and law. By definition, those who deliver the people from extraordinary levels of rage, fear, anxiety, neglect, malnutrition, infection, diabetes, renal failure, sexual abuse, assault and homicide will thus allegedly be politicians, barristers and political activists.

The assertion that those who campaign for Indigenous rights are disinterested in Indigenous suffering is false and unnecessarily divisive. No choice is required; both agendas have been and will continue to be pursued, simultaneously, by and on behalf of Indigenous people.

Dr Sutton says in his book:

I also believe that considerations of care should be put before considerations of strict justice, as a matter of principle. There are times when one must yield to the other. In general, I am inclined to give priority to care, and to tough out the storm of complaints about flawed justice. Others take a different view. In the case of a conflict between care and appeasement there should be no argument: appeasement of vested interest groups goes.

It is not clear just what extent of flawed justice Dr Sutton proposes should be tolerated, but it would seem to embrace flawed justice for those who may be accused of crimes of violence on Indigenous communities. If so, his views ought to be rejected. The courts must continue to have proper regard for the circumstances of disadvantage of an Indigenous offender, and must

continue to place importance on the rehabilitation of offenders. To do otherwise, would be to tolerate flawed justice.

There are, of course, limits to the extent to which such factors can ameliorate sentence. All judges and magistrates appreciate this, but appellate courts, whilst emphasising that all persons are subject to the same laws concerning sentencing, have maintained that the deprived background of an offender may well affect moral culpability and might require moderation of the principles of deterrence and denunciation.

The very fact that so many Aboriginal offenders have extremely disadvantaged backgrounds, and the reality that prospects of even the most determined offender to reform have been and will continue to be blighted by decades of government inaction in addressing the underlying issues, can undermine the sentencing process. However, as the Victorian Court of Appeal noted in the case of Terrick:

The prevalence of disadvantage within indigenous communities does not diminish its significance for the individual offender. On the contrary, membership of a community where disadvantage is widespread might compound the difficulties suffered by a particular individual. The social and economic disadvantages often found in Indigenous communities are powerful considerations. The fact that disadvantage amongst members of an Indigenous community is widespread must not be allowed to reduce the impact of disadvantage as a sentencing factor in a particular case.

The state has an obligation to protect its citizens, and to do so by short-term and long-term support. Indigenous offenders should accept responsibility for their crimes, and the courts their responsibility for imposing just sentences, which entails that they properly weigh up the significance of a severely disadvantaged background. But the state should also accept its own responsibility for perpetrating Indigenous offending by its failure to adequately address the underlying issues that beget crime.

Consistent with accepting their own responsibility for the perpetuation of crime in Indigenous communities, the federal and state governments should commit to providing greater police protection on communities and greater support for addressing the underlying issues. As part of that process, strong support should be given to diversionary justice programs, and alcohol and drug rehabilitation programs. That need is particularly acute for juvenile offenders.

CHAIR—Thank you for that, obviously, profoundly considered contribution. We are speaking in a context in which the federal government has committed itself to the so-called Closing the Gap project. That is to say, a systematic attempt to improve circumstances of Aboriginal education, health treatment, housing and other matters. It is in that context your royal commission decided and pointed out long ago that, without those things being fixed, there was little chance of there being any reduction in the rate of offending in Aboriginal communities. It is against that background that our present inquiry is taking place. You said at the end of your presentation that there ought to be more attention paid to diversionary programs and rehabilitation. Can you just expand on your thoughts in that area?

Mr Eames—There is obviously a point where people cannot be diverted from the criminal justice system and cannot be diverted from imprisonment because it is in fact the last option and it has to be the option which is taken. It was fundamental to the royal commission that

imprisonment should be seen as the punishment of last resort. That was given legislative force, I think, in most places in the country.

What it should mean is that, where you have an offender, whatever the nature and seriousness of the offence, if there is an option open other than imprisonment then it ought to be taken. That as a statement of principle is not unique to Australia. The Canadians adopted the same legislative approach some years ago—and enforced it, so it became quite a significant principle in the day-to-day functioning of the courts.

You have to appreciate, of course, that the royal commission's focus was on deaths in custody. The critical factor there was: the more people are stuffed into prisons, the more likely it is that some of them are going to die in prison. So the emphasis on imprisonment as a last resort has that very important background. At the same time the royal commission well and truly recognised that there were offences that required imprisonment and some of the violence, as seen by the royal commission, was horrendous. But the commission recognised that diverting people out of the criminal justice system, especially juveniles, at an early stage was a tremendously important objective. If you could stop these young kids becoming part of the pattern, which was then reflected in 25- and 35-year-olds in the prison system, that was a highly desirable objective. How do you achieve that? There is a whole range of programs. There is a mentoring program, for example, in Warrnambool in Victoria, which appears to have very good prospects of success. It is about trying to grab kids at the very earliest point, when they are just on the fringes of getting involved with the criminal justice system, and giving them a buddy or a mentor, who takes a deliberate and active role in watching that kid's progress and trying to keep the kid out of custody. So there is that sort of diversionary program.

There are also the diversionary programs that involve various non-custodial orders which keep people out of prison. None of those are of any use at all if people simply go out on a diversionary program and then commit offences and breach their non-custodial orders, for which there is an unfortunately long history. Yet again, in Victoria I think it is really interesting that they have developed programs which are targeting breaches of those non-custodial orders. Why are people who are given a chance by the courts blowing that chance? They are emphasising the fact that they need support. They need very solid one-to-one support. Why are kids who have obligations under their non-custodial orders not turning up at the places they should be? Try to find out the reasons rather than just saying, 'You have breached it, therefore in you go.' So it is a really labour intensive program. If it is going to work it requires very strong commitment by the Aboriginal community. That involves a strong recognition within the Aboriginal community that juveniles with severely damaged backgrounds will inevitably end up in the criminal justice system if these sorts of programs are not undertaken.

I must say, I do not think that the figures I quoted from Victoria are pure chance. Victoria has had a number of interesting programs. I think it was the first state that actually put a written agreement into play—an Aboriginal justice agreement. It seems to me it was taken seriously on all sides. It involved across-government support. It was not just symbolic; people appreciated the importance of a statement of intent, signed by all parties to the agreement. I have had a bit to do with people since that time and it seems to me it has been an important background all the way through. That was followed up in very practical ways. For example, in 2005 the government commissioned two Aboriginal people, Mark Rose and Joy Murphy, to do a report on the implementation of the royal commission. I think the very fact that that very task was handed to

Aboriginal people was an extremely important statement. Their document was a very frank, and I thought powerful, examination and recognition of the Aboriginal community's own responsibility to come to grips with some of these problems. So diversion was fundamental to the royal commission—but realistic diversion, recognising that for some offenders it is too late for diversion and the only option is imprisonment. But I think the emphasis is still right.

Mr KELVIN THOMSON—I have two issues. The first relates to the Koori courts. You mentioned that there was some media dismissiveness of them and their role. I would invite you to speak about that a little bit more. I have been to the Broadmeadows magistrates court and people there were very positive about the Koori courts. The sorts of things that I hear are generally positive about the work of the Koori courts. If you want to tease out that question of their reputation and work a bit more, that would be welcome.

Mr Eames—One of the interesting things about the Koori courts is that many people who have had an instinctive hostility to Koori courts or even not instinctive hostility but hostility based on experience or principle—that it is apartheid or a separate system of justice and that that is an inappropriate response by the state—have been won over by going along to the Koori courts and watching them in operation. I have done so, and I must say that they do not look like a soft option to me. It does not look to me as though the people who are participating in it are treating it as a soft option and an easy way out. Shame has always been an important factor within Aboriginal communities as a form of punishment and discipline. The Koori courts very much accept that principle—sometimes too much, with the Aboriginal elders taking such a strong line that the magistrate or judge presiding has to say, 'Hold on: that's a bit too harsh.' I have been impressed with the results. You have to be careful about results from the small numbers that are involved, but they are all positive. They all suggest that people who were in many cases regarded as long lost to the system have avoided re-offending.

An example of how the Koori Court is treated is the reporting of the recent case of Steelie Morgan. It was a difficult case. It involved very serious offending against a young Aboriginal girl who was the sexual partner of the offender. Terrible acts of violence were repeatedly committed over a long period of time. It came before the Koori Court before an experienced judge. He got a sentence of over three years. He appealed that sentence and was successful on appeal in having it reduced and being released on the balance of the sentence on a bond at that time. There would be different views about whether the sentence was unduly merciful or not. But the court, apart from discussing the process of the Koori Court, set out in great detail the factors that it described as uniquely compelling that showed that this was a chance for reformation and that this person had actually taken an opportunity to change his life. There must have been 20 factors, which were listed in dot points. The court then made a point of saying that there are occasions where, even though the protection of the community and retribution are very important factors, justice has to be tempered with mercy. They took the view that this was one of those cases. It was plainly a difficult case that was very carefully thought about in terms of the relevant factors.

That was reported in the *Herald Sun* the following day under the banner headline, 'Attacker gets Koori reprieve'. The first sentence of the report read:

A VIOLENT man convicted of a series of horrific assaults on a 15-year-old girl he held prisoner has been freed from jail because he is an Aborigine.

The report did not mention a single one of the factors that the court had referred to. Not surprisingly, in the media in the following days there were letters to the editor decrying this outrageous device of justice that meant that Kooris could walk into court and get a bag of lollies and go away again while a suffering victim was ignored. It is not surprising that they had that reaction to it.

I just think there is a responsibility. The public are perfectly entitled to take the view that they dislike the Koori court system or it is fundamentally flawed or whatever it might be, but they are entitled to have the information on which to make a judgment about it. That case just struck me as a classic illustration of how you can load up the public response to an important initiative, which has got a lot of Aboriginal people desperately committed to this in their own time being involved in the Koori Court system. I have met them, I have spoken to them and I have lectured in seminars that they have had. These are terrific people who recognise are very, very serious problem which is affecting their own kids in their own communities. They are putting their trust in the Koori Court and they believe it is working. It deserves better treatment than that.

Mr KELVIN THOMSON—I acknowledge I have legal training, and we are all steeped in equality before the law and the same treatment for everybody, but in terms of a pragmatic approach, trying to get an outcome that works, it seems to me that they do do a lot of good. Melbourne might not be the right place to do this, but can I raise the question of outstations and homelands as potential vehicles for assisting young offenders. Tom Calma, the Aboriginal Human Rights Commissioner, has mentioned this in his latest report and given examples of young offenders who are located out to the homelands and given mentors and role models and so on to try and get them on a better path. Is that something that you are familiar with or have a view about?

Mr Eames—I am very familiar with it, but I am dated and I would be reluctant to say much about it, except to say that both in the Territory, and indeed in Victoria, there are programs and individuals who are engaged in pretty much that sort of exercise—taking young offenders under hand, trying to get them away from influences and giving them hard work. There is a terrific farm project just out of Mildura that has been going for years and which I have supported over the years which has that sort of objective. In the Territory I know individuals who have been involved in those sorts of programs. Whether they are working now, I do not know and I would not want to make a comment about. But there are plenty of people who would know and I think it would be very interesting for the committee to follow up on. It is very difficult, of course, to simply plonk people in remote outstations and say, with the best will in the world, ‘We’re going to keep you here and the process is going to be a hard, physical one.’ I have known of programs like that have operated. How successful they were I do not know. You would have to evaluate them.

Mr KELVIN THOMSON—Okay. Thank you.

Mrs VALE—Thank you very much, Your Honour, it has been absolutely delightful to hear you speak. Just to declare my interest in this, before I became a parliamentarian I was a solicitor and I worked in juvenile justice in New South Wales. I was a duty solicitor at Bidura Children’s Court and Sutherland Children’s Court. I was also the initiating coordinator of a diversionary program at Sutherland local court. It was called the Community Aid Panel for First Offenders. I would love to hear your opinion on it, because we have spoken about successful diversionary

programs here. It seems to me that diversionary programs before they are ever going to the work they have got to be relevant to the person involved. In this particular program the child would go to court, usually a first offender. Sometimes now I believe that it could be a second offence. The judge would actually suspend the sentence and ask the young person to attend the community aid panel. The young person would actually plead guilty first and agree that they would like to go to the community aid panel. The idea was that the young person would then not get a criminal record on his or her first offence. The young person would come before a panel of two community people from the local area, a police officer who was not the arresting police officer, and a solicitor who was not the defending solicitor. This was all voluntary; it did not cost the government a cent. It was actually done from the community.

We did not have any young Indigenous people appear before that committee, if I recall correctly, because I live in a very southern area of Sydney that is highly residential. I do have about 600 Indigenous families who live amongst the population, but they own their own homes and are working, and rarely do they come and knock on my office door.

Time would be taken on the panel to discuss the offence with the young person: would they do it again, how has it impacted on them, how has it impacted their family and has it impacted on them at school or affected their work opportunities? They would be asked to do something as a commitment to the community, such as mowing the lawns at a local nursing home or participating and supervising at the local police citizens youth club.

We found that the rate of recidivism for a lot of these young people was down as low as three per cent over the period of time that the court kept records. It lasted for about 10 years at Sutherland local court. I am told that it changed when the state government brought in a new conferencing policy, but the magistrates want it back, because it gave them an option other than sentencing these young people or giving them a criminal record.

I have often thought that that kind of model would work very well in Indigenous communities, because the two community representatives could be Indigenous people, and therefore there is an Indigenous ownership and an Indigenous support, if you like, for the young person involved. I would like your thoughts on that kind of model, which, as I said, did not cost the government a cent, because it was all done in a voluntary capacity—although you had to actually get someone to coordinate it.

Mr Eames—That is precisely the sort of imaginative response that the commission was talking about. It is a case of tailoring programs for the individuals involved. It might not be exactly like that in the case of juvenile Indigenous offenders, or it might. It might be that there are problems in dealing with parents in that case. A lot of young kids do not have parental support in those circumstances and so might need a mentor who comes from somewhere else. One interesting change that has taken place, certainly in Victoria, is that there is, I think, a much better relationship with police than there was 10 or 15 years ago. Therefore, police are much more involved in some of these programs, especially in these mentoring programs. I think that is proving to be a helpful thing. It is breaking down some attitudes as well as giving some sort of positive support.

Governments can always find evidence of programs that do not work, and it is therefore very tempting to say that no programs work. What it means is that you do not have the right program;

you have to put some more work into it. I have not found Aboriginal people lacking in enthusiasm for trying to find answers to these things, and people have come up with bright ideas: in the royal commission we had a lot of submissions from people who were looking at these sorts of issues in their own communities. That sort of level of hands-on interaction is precisely what is required. It requires that sort of personal involvement if the programs are going to work.

Mrs VALE—Going back a bit further in trying to bore down on the causes, you have actually spoken about the underlying issues of disadvantage. To me, they seem to be chronic, and I really would value your guidance on this. It seems that when we look at remote communities, young people everywhere, whether they are Indigenous or mainstream young people, need a goal; they need something to work for, whether it is an occupation or a particular position of status within their communities. We as a government—federal or state government—actually impose on Indigenous communities, especially remote communities, a form of communal land tenure. So the people who live in those remote communities have no opportunity to aspire to home ownership or owning their own land. This, to me, is straight communism, and I would be grateful for your guidance on this, because it is where a lot of Indigenous people in those remote communities suffer from a loss of hope and a loss of opportunity. The education that they can get at school has a focus and a purpose. If you cannot get a job to get your own property, to own your own land, there is no point in having an education. I think young people everywhere feel the same thing.

I feel we need to look at providing the opportunity for Indigenous people to own their own house and to own their own land individually. That is where real equality and real equity come from. Until that is allowed—and it is not allowed under the land council system, where it is in communal ownership—it cannot happen. We all know communism does not work. I am looking at this very laterally but it seems to me that that is what we have imposed on people in remote communities. Until we give them a sense of hope, they are always going to have an underlying disadvantage. I would be grateful for your guidance on that.

Mr Eames—The Aurukun case is interesting. I have dealt with it in my paper at a fair amount of length. I looked at the backgrounds of each of the offenders who came before the court. They had horrendous backgrounds, just appalling. What struck me as significant was that, at the time of the offending, Aurukun had just been awarded the dubious distinction of being declared the most disadvantaged community in the whole of Queensland. It struck me that there might be a connection between these things. It was as deprived and as dysfunctional as could be got in the whole of the state. Is the solution to that ownership of houses? It might be for some people. I am not sure that ownership of houses is inconsistent with land rights legislation or native title legislation—in fact, I do not think it is.

Mrs VALE—You are right; it is not inconsistent. They are not mutually exclusive.

Mr Eames—Some people will want houses and some will not. One of the interesting aspects of the really honest examinations of this dysfunction that Dr Sutton does is to look at this question of destruction of housing. Why does it occur? Why does violence apparently get tolerated? Why does juvenile violence apparently get tolerated within the community? These are quite hard questions. He looked at destruction within a home and how it was, he said, an acceptable response to rage and anger to destroy your own property. Of course, that is rather inconsistent with having a housing program if houses are going to be destroyed. So there are

some fundamental questions that need to be decided. Also, people's lifestyles are different. Not everyone wants to live in a house.

CHAIR—There are a number of written submissions that we have already had to the inquiry which do directly address that question and which do not end up with quite so pessimistic a view as Dr Sutton has.

Mr Eames—I do not either. Coming back to your question, calling it communist or otherwise is really a bit of a diversion. What you are really talking about is—

Mrs VALE—It is communal land ownership.

Mr Eames—What is required? It might not be ownership; it might be leasehold. There have been great debates in the Territory.

Mrs VALE—There are different ways of owning something.

Mr Eames—Yes. If the question is whether people will have a house over their head that gives them security and gives them the opportunity for their kids to study and so on and so forth, they are, of course, all important considerations. I do not think any of these programs should be adopted on a simplistic, one-size-fits-all approach. The complexity of Aboriginal affairs from one community to another has to be acknowledged. The failures have to be recognised.

There has been a lot of money put into housing in the Northern Territory, of which you can now go and see the rubble. The houses that have tended to last are the remarkable tin roofed little houses that were probably about five metres by four metres and were built in the sixties. They have all survived. They would survive hurricanes and H-bombs. I think no-one would bother destroying them because no-one would bother living in them. Every sort of housing project has been tried in the Northern Territory and yet there are still thousands of people without basic housing. So these are serious problems that have to be examined.

Mrs VALE—There are some good news stories about housing, though. There is one housing corporation up in North Queensland that is actually run by a board of Indigenous people for Indigenous people and part of the contract they put in for house maintenance actually requires that the white or mainstream contractors have to employ Indigenous young people and give them traineeships. They have got a 70 per cent Indigenous component in their workforce. I think it is a good news story, so it can happen. These young people are not involved in the criminal system. They are getting trained as chippies, brickies, plumbers or whatever. They have actually found that, whenever this Indigenous team goes in to repair the houses, the owners of those houses never ever trash the houses because there is a really strong ownership.

Mr Eames—I might say that I am not suggesting that Aboriginal people trash their houses.

Mrs VALE—As you were saying, sometimes when you feel disaffected—

CHAIR—With all due respect, His Honour is expert in law more than housing policy.

Mrs VALE—That is all right. It is just getting down to the underlying causes, which is what we are interested.

CHAIR—We have come to the end of the time and I must say that we are most grateful, especially to have the perspective of somebody who has so closely investigated these matters. It is half a generation ago now, isn't it? We thank you very much for giving us your time.

[9.51 am]

BATT, Mr Edwin Charles, Private capacity

CHAIR—In order that we may keep up with our timetable, I will immediately call our next witness, who is His Honour Mr Edwin Batt. I have a piece of paper here to tell me that he was a solicitor in Fitzroy, a ministerial advisor in the 1980s, a barrister appointed in 1988 and presently a magistrate in the Gippsland region. Mr Batt has a long involvement with Koori justice issues in Gippsland. I would be grateful if you would be good enough to state the capacity in which you appear before the committee.

Mr Batt—I am a magistrate in the state of Victoria. I do not appear before the inquiry representing the Victorian magistracy; I appear in a personal capacity as a Victorian magistrate.

CHAIR—Would you like to make a brief introductory statement?

Mr Batt—Yes, I would. Firstly, I wish to acknowledge the traditional owners of the land upon which we are now present. Secondly, I want to say that I am in some respects embarrassed at being here because I could be seen as just another whitefella telling blackfellas what to do and I find that very difficult to deal with. Thirdly, I am embarrassed to be here because I am part of the problem. One of the main issues that you are confronting is the high rates of incarceration and detention of young Aboriginal offenders and as a magistrate I put them there. I am responsible for doing it. So for those reasons I have a fear and trepidation of participating, but I felt I had to at least put some matters before the committee because I think some things do need attention and some things are being missed.

I am speaking pretty much from the heart, not from the notes, because Mr Eames spoke so eloquently and everything he said I would just have to concur with. His knowledge and understanding of the legal issues and matters associated with the history of these issues is prodigious. But I think there are two vital points that have to be made. The first is to do with the way we deal with young offenders particularly but offenders generally who are Indigenous people, once we have come to a conclusion that they need to be withdrawn from the community in some way. I am a firm believer that the current prison system is not appropriate and there is a big opportunity being missed.

The privatisation of prisons and the running of prisons generally of course are endeavouring to address some of those problems, but I think a radical reappraisal of how we detain young Aboriginal offenders needs to be undertaken. Primarily the places where they are taken should be run by Aboriginal people. The Aboriginal community should be the ones that are responsible for their rehabilitation, and the factors that associate with their crime or their commissions of crime need to be examined. In particular, the alienation and all the factors and aspects of alienation which drive them to commit crime need to be examined within the cultural context of an Aboriginal community.

There have been attempts at that in Victoria and they have not survived—for no good reason, in my view. Warrakoo, which Syd Clark used to run up at Mildura—I think it might have been

just over the border in New South Wales, but we always called it Mildura for jurisdictional reasons—was a great enterprise and a place where we could send young persons with some degree of confidence. But there was a great difficulty in relation to the tyranny of distance. Family connections for Gunai/Kurnai people were very difficult. If you see that map, from one end of the state to the other is a long way, so they would be just wrenched away from their communities and their people. Whilst they would be well supervised, the bridges within the community and the structures within the community were broken.

There needs to be a firm reappraisal of the way that young persons are detained. I know that might be expensive, but it is not necessarily so—and I think it is important.

CHAIR—Prison is expensive.

Mr Batt—That is true. The other thing you have got to realise—Mr Justice Eames had those statistics and you probably have the statistics too—is that the likelihood of a young person of 15, I think, who is detained in the justice system of becoming a person who serves a sentence in the adult system is about 80 or 90 per cent. It is something absolutely staggering. The statistics are just overwhelming that the detention of young persons in the prison system as we know it is not going to rehabilitate them and practically guarantees that they will be serving sentences in adult prison. Blind Freddy could see that that has got to stop.

The other issue that I think is being missed in many of these discussions is the lack of real absolute endeavour on the issue of education. One hundred per cent of the young people that come before me who are Aboriginal offenders in the juvenile area are not going to school. You might laugh and think, ‘100 per cent?’ When I say ‘not going to school’, I mean at least not going to school regularly. They might go once a week perhaps, if you are lucky.

In Gippsland, the 2006 census—frankly I think these figures are flattering—found that 14 per cent of kids 15 years and older complete year 12. I would be staggered if it is 14 per cent, actually. But how bad is that? It is less than half of what the white population in that community manages. As I say, I have no real confidence in those census statistics because I have been on a school council for nearly 10 years—it is 10 years now—at Warragul High School, which has a big Aboriginal population around there, and I think I can count on one hand the number of kids who went through to year 12.

I did discuss my appearance today with a lot of Aboriginal people, obviously. I have so many wonderful friends and I have lived in and loved and enjoyed and worked in the Aboriginal community in Gippsland for 20 years. One conversation I had was simply about what things I should tell: ‘What would you do if you were in my place?’ One lady—and these are really hardworking, committed people—said there was only one word to tell them: it is culture. Others in the room sat around and nodded and there was a feeling that that was a good thing to say. Then one lady huffed and puffed and folded her arms and said, ‘Yes, but culture is not going to get them a job.’ That was a really neat nub, I thought, of the problems associated with Aboriginal offending and the way in which the Aboriginal communities are developing—certainly where I live in Gippsland.

If you spent the justice budget on education in Gippsland, there would be no problems. I can feel arrows going into my back from lawyers all over the world, but it is the truth. I just feel that

in so many of the programs we need the concept of education and the aspect of retaining children at school and developing within the Aboriginal community a culture—not an Aboriginal culture but a day-to-day culture—that learning and going to school is a good thing and must be done. Then you would reduce so much of the Aboriginal offending. Kids who are at school do not cause me any trouble. Kids who are out on the streets are going to commit crime—no worries at all.

The last thing I want to say, and I think this is also important to understand, is that, whilst the population of Aboriginal prisoners is growing, what is of more concern to me is the type of offending, particularly in relation to young people, that is occurring. When I became a magistrate and when I started in the law—30 or 40 years ago—a kid might steal a car and get six months detention. If you looked at the offending history of each person—a young person or Aboriginal person—in detention, you would find that their criminal history would be about that long. Look at the criminal history of young people who are now detained in detention centres, and their records are as long as your arm, and for serious things.

Last week, I dealt with a 13-year-old who savagely raped an older, mature woman in our town, in Gippsland, in company with another fellow. He was 14 when I dealt with him, probably. Not content with that, he left the scene, left the woman there—having disrobed her and chucked her clothes in the river—went off to another house and endeavoured to indecently assault another lady in that house. She was able to beat him off. He was 13. These are problems that are faced by magistrates and judges all the time—the seriousness of the assaults, the unprovoked attacks and the responses to things which are just right out of order. Obviously, these things relate to substance abuse. These children are affected by serious substances. There is glue sniffing and there are other things that are readily available, such as spray paint, which they breathe in through plastic bags and the like. They go off their taps.

Basically, these sorts of sentencing issues arise. You say that there are too many young people in custody. But the fact is that they are committing extraordinarily serious offences over and over again, which demands that you gather up the reins and put them somewhere. As I said, we have to make sure that we have the appropriate places for them, and I do not think that we have. We also must make sure that we have proper educational supports from a wide range of angles, and I do not think that we do. Those were the two matters that I wanted to bring before the committee.

CHAIR—I am sure that my colleagues and everyone else in the room is affected by the passion with which you speak. We acknowledge that you are speaking from a background of close friendship with and understanding of Aboriginal people. It is worth acknowledging that one of the issues that underlies increasing rates of imprisonment of Aboriginal people is that there are a higher proportion of young Aboriginal men as part of the total Aboriginal community than the proportion of non-Aboriginal men as part of the total non-Aboriginal community. In other words, everybody knows that most crime in all societies is committed by young men between the ages of 15 and 25. That happens regardless of class, creed or ethnic background. We can acknowledge also that since the middle 1970s or early 1980s all crime in Australia has been affected by the rise of a drug culture and the consequences therefore of very bad substance abuse.

I would very interested if you could elaborate on the nature of the alternative institutions that you think might be appropriate to deal with young Aboriginal people who have some history of

offending. I should say that I have almost lost count of the times when someone, Aboriginal or not, concerned with this issue has said to me that you need an institution of this sort. On the other hand, it is true that our society has hardly developed such institutions.

Mr Batt—I do not want to be the whitefella setting out the blueprint for these institutions, but for me—

CHAIR—To assuage your conscience in this respect, we are about to have a roundtable with lots of Aboriginal people.

Mr Batt—I am pleased about that. To me, the central thing that these places need to develop is a sense of belonging for the young person. They need to know that they are loved and valuable and have a lot to give. They need to know that their families are worthwhile and that it is the young person's responsibility to honour that family and that background.

So many families are deteriorating rapidly in my area. The whole process needs a fairly radical development within the local communities. I do not know how you do that. Some conservative people would say Christianity, perhaps, still has some answers. I am not suggesting that is necessarily the answer, but it is probably one. So many of those family problems are issues which you are going to send a young person back to once that person has completed his or her period of detention, and those families have to be healed and given some purpose to make that whole process work. A lot of the young people that I see have no real idea of their family identity. They have no real idea of the good things that have gone on in that family—simple things like how their great-grandfather was the leader of a gum leaf band that was highly successful and acclaimed—rather than that nobody within their family history has had a job or done anything. They are little things that might mean so much in many ways.

There is a lack of attempts to connect, so I think the first things are to make sure that a young person knows their family and history and that positive aspects within that family history are discovered and worked upon. I think that helps. The young person within that structure has to have some good basic education and a really good insight into the effects of alcohol and all the other substances. They are pretty basic things that need to go on; you do not need to be Einstein to say that. But the issues of connection and understanding have to be taught. Then there are the cultural things, which I am not qualified to speak on but which I think need attention. I am sure there are people who would be able to attend to that. There needs to be a level of openness, and I think a connection with nature is an important thing. I also think work or some level of day-to-day activity within that space is important. There are all sorts of things like these that could be attended to. In addition, the personalities of the people who run it are so very important. You could do it all in a tin shed on the 10 acres that I live on without a problem if you had a really good, strong person that the young people would gravitate towards and keep.

Creating those kinds of persons is something which is the responsibility of the Aboriginal community. Though they are about, they burn out. There are a lot of guys who live mainstream, who just do jobs. There are fellas who are friends of mine and just run businesses. They have regular, steady jobs. I think they need to stand up a bit more. I feel that young girls need to see Aboriginal nurses in the community. They need to see fellas who run businesses, who are doing normally in the mainstream. They will think, 'That's normal life; I want to be part of that.' So

there needs to be some bridging into those centres by people within the community who live and work what we in the white community call normal jobs.

CHAIR—But you would want this institution to be in Gippsland, not Mildura.

Mr Batt—I think there should be one everywhere. I am not saying it should not be in Mildura.

CHAIR—So you were really suggesting there should be one.

Mr Batt—I do not think there should only be one. The HM Prison Morwell River was closed; I think that was an opportunity there. I am sure there are places all over the state. I think there ought to be a real analysis of how they work. Each community should be able to provide them.

Mr KELVIN THOMSON—You talked about the importance of education and jobs for young people, and how 100 per cent of your offenders are people who are not going to school. I can see how boredom and envy will lead to young people being responsible for property crimes and the like. Is that also true of the more serious crimes, some of the things you talked about? Are they are also universally committed by people who do not have education or work?

Mr Batt—Absolutely.

CHAIR—Is that not true of the whole prison population, white or of any other ethnic background?

Mr Batt—I went to school with a whole lot of Italian young people whose parents came out from Italy with no education, but those parents were dogmatic that their children should go to school and go to university. The children were driven to attend and achieve. Look at those Italian communities now. Obviously we see this with the Asian communities—their parents have a great passion for education and they make sure the children wring every drop out of the education system. But that passion and that commitment is not something which is, to me, obviously arising within the Aboriginal community that I live in, and I just wish it was. If the parents had a really serious passion for the kids to go on at school, and they were given support and help in all of that, we would have a lot less problems.

Mr KELVIN THOMSON—You said we should spend the justice budget on education. It is a statement of the bleeding obvious: when you have got the kind of case you described with the sexual violence against the 13-year-old, clearly there is an ongoing requirement for the justice budget, but is it legitimate to think that we should be trying to put more emphasis on education as a pathway out of the situation that we are currently in? Do you see that as being a realistic thing to do?

Mr Batt—Absolutely. Some schools do it better than others. You are in Northcote, aren't you?

Mr KELVIN THOMSON—Coburg; Pascoe Vale.

Mr Batt—Well, it is not quite that area, but some schools do it better than others. As I say, I am here primarily as a magistrate but clearly schools are funded on the basis of the number of

kids who go to the school, and school principals are not really interested in having a bunch of rowdy, uncontrollable Aboriginal kids in the school because that drives out Mr and Mrs White from the area, the numbers shrink, the school is not funded and the school gets run down. Unfortunately, the way things are currently structured, it seems to me that there is no real incentive for schools to ensure that there is a good, strong Koori program within the school, for those reasons. I know that is a pretty tough thing to say, and I might be treating all the school principals around the world pretty harshly—

CHAIR—If you look at the list of schools that are going to receive more resources under Julia Gillard's new disadvantaged schools program, I am certain you will find that there are a lot of schools with significant Koori populations who will benefit from the program, which is encouraging from the point of view of the argument that you have been making.

Mr Batt—I often sit on the Koori Court and I know that the issues about incarceration are of constant concern to the persons who join me on the Koori Court. But I would have to say that if magistrates were not sitting in the Koori Court, the incarceration rates of Aboriginal offenders would skyrocket.

CHAIR—Can you elaborate on that proposition a little more?

Mr Batt—The Aboriginal people who are selected to be on the Koori Court are elders and respected persons, and many of them are becoming increasingly fed up with the lack of response and lack of effort by some of the people who come before the court. They just say, 'Lock 'em up; I've had enough of it.' We cannot and we should not, and we have to sit down and talk—and then they sit down and talk. But the first, shoot-from-the-hip response you often get when you sit down and talk about a problem or a person is, 'Lock 'em up; I've had enough of 'em.' That is in the heart of everybody. With regard to the *Herald Sun* readership that Mr Eames complains about, the Aboriginal people who sit on the Koori Court are no different; they are as fed up as everybody is. But, then, they take a big, deep breath and say, 'Okay; we're going to do this,' or 'We're going to do that,' and they will do this and do that. They do work effectively and the Koori Court initiative is a great one but, as I say, I think that if there were not a moderator there many times people would get a pretty tough bite from the Koori Court.

Mrs VALE—Thank you, Mr Batt, for your evidence this morning; it has been very valuable. I want to ask you some questions about the facility at Mildura that you spoke about. What was it called?

Mr Batt—Warrakoo, it is called, and the man who used to run it was Syd Clark.

Mrs VALE—Is that an Indigenous person?

Mr Batt—He was. If we could replicate Syd Clark all around the state we would do all right, because he was the sort of fellow who would not brook much nonsense, and that worked.

Mrs VALE—What kind of a program was it, Mr Batt? Did it have a residential component?

Mr Batt—Yes, they had to live there. They could not leave it. It was very difficult to leave; it was out in the scrub.

Mrs VALE—So it was not a prison but it had a very strong residential requirement?

Mr Batt—It did—and they worked; he ran it as a farm.

Mrs VALE—Was it an educational facility other than the farm?

Mr Batt—They learnt their trades, but reading and writing and arithmetic, no. As I say, some of the problems I found with it was that the people were taken out of their local areas and were a bit lost with their lives, with their loved ones and all that. Sometimes that is not a bad thing. Sometimes, with all those domestic violence issues, a little bit of a break is not bad thing, if they were up there for those sorts of offences. But, generally speaking, keeping the bridges going is ideal, provided the bridge you are going to outside is a good, solid bridge and effective.

Mrs VALE—Did that kind of facility provide magistrates like you and your colleagues with an alternative sentencing option?

Mr Batt—Absolutely. We would do a teleconference with Mr Clark in Mildura from the courthouse in Gippsland, and he would interview the young offender, or the offenders, that way and then I would adjourn the case for six months, nine months, a year—Syd said, ‘I want this bloke for 12 months’—and away he would go. Then he would come back and Mr Clark would say, ‘He’s done really well,’ or ‘He’s wrecked all the tractors and disappeared.’ If he did not do the right thing, Mr Clark would bring him to the Mildura Magistrates Court and he would be remanded back to our court, and down he would come in the van and I would deal with him. But, if he did the right thing, he would then come back at the end of his time up there and he would get a bond, general speaking, because he had done his time.

Mrs VALE—And you felt that it had a good success rate?

Mr Batt—For sure.

Mrs VALE—Would you like to see similar facilities closer to family groupings that also had a residential requirement and perhaps were educational facilities run by Indigenous people?

Mr Batt—I think that is very important. It seems to me to be a very important thing.

Mrs VALE—You think it might provide some kind of positive circuit breaker?

Mr Batt—Yes, I do. I think that, given the process of imprisonment and the culture of a prison, however you restructure a Koori unit within a prison you are still behind the walls and you still have that prison culture. I just feel that that is counterproductive to the specialist sorts of issues which bring Aboriginal people to a stage where they have to be incarcerated.

Mrs VALE—So, without putting words in your mouth, I hear you say that there is a need for magistrates to have another sentencing diversion option that actually offers residential care and also educational opportunities, run by Indigenous people.

Mr Batt—Absolutely.

Mrs VALE—Thank you very much.

CHAIR—We are most grateful for the evidence you have given us at this hearing, Mr Batt; we understand that you felt uncomfortable, in some respects, giving it. But we are about to have a roundtable with lots of Koori people, and I feel sure that they will let their opinions be well and truly known. I also want to say that there is a remarkable consistency with which people of goodwill seem to be telling us, over and over again, of the need for the kinds of approaches that you are speaking about. There are 100 variations, but the emphasis that you were giving is one that is clearly shared by many people of goodwill.

Mr Batt—Thank you very much. I am pleased to hear that.

Proceedings suspended from 10.26 am to 10.45 am

BAMBLETT, Dr Alfred, Chief Executive Officer, Victorian Aboriginal Community Services Association Ltd; and Chair, Victorian Aboriginal Justice Advisory Committee

BURNS, Ms Prue, Senior Researcher and Project Officer, Victoria State Office, Mission Australia

GUIVARRA, Mr Frank, Chief Executive Officer, Victorian Aboriginal Legal Service Co-operative Ltd

HAMPSHIRE, Ms Anne, National Manager Research and Social Policy, Mission Australia

JACKOMOS, Mr Andrew Morgan, Director, Koori Justice Unit, Department of Justice, Victoria

JONES, Ms Jarrah, Committee Member, Victorian Indigenous Youth Advisory Council

KANOA, Mr Timothy James, State Coordinator, Victorian Indigenous Youth Advisory Council

SLATER, Miss Clarisse, Project Officer, Victorian Indigenous Youth Advisory Council

SUTTON, Ms Elizabeth Anne, Executive Manager, Policy and Programs, Association for Prevention and Harm Reduction Programs (Anex)

WARE, Ms Julienne Maree, Acting Chief Executive Officer, Association for Prevention and Harm Reduction Programs (Anex)

CHAIR—We will resume proceedings. I welcome the witnesses. All of you, I think, have made submissions, which are detailed. There are many common threads of understanding and belief amongst the community of people who are most concerned about these issues. Bearing all this in mind, we thought a sensible thing to do would be to get you all in under this discussion format rather than have you merely reading you lines all over again. The hardest thing is how to start. Perhaps Andrew Jackomos could give us a thumbnail sketch of the Victorian Department of Justice framework, which is not, I think, controversial with anyone else. It is accepted generally that it is a reasonable way for government to be approaching the issue. That would get the discussion going. But we are in your hands.

Mr Jackomos—Thank you. I acknowledge the traditional owners of the land that we are meeting on—the Kulin nation. I acknowledge their elders, both past and present. I also acknowledge elders who may be here in the room with us. As the director of the Koori Justice Unit, my primary responsibility is the ongoing development and coordination of the Victorian Aboriginal Justice Agreement. This year marks the 10th anniversary—on 1 June—of that agreement. That agreement is an agreement between the Koori community of Victoria and the Department of Justice—the Attorney-General, the Minister for Police, emergency services, corrections, and children. From within the Koori community we have the Victorian Aboriginal

Legal Service and the Victorian Aboriginal Justice Advisory Committee. We also have a range of community elders and respected people from across the state.

What makes our Aboriginal Justice Agreement work—and I believe it works—is this strong partnership. It is a dynamic partnership that is regularly tested. But it is a continuing partnership, and it brings together a government, judiciary and community. The agreement very much comes out of the Royal Commission into Aboriginal Deaths in Custody. I think it was back in 1997 that there was a summit in Canberra, which was sought from Aboriginal and Torres Strait Islander leaders nationwide, about the lack of responses to the royal commission recommendations. That is how they came together. There was an agreement, I think from most jurisdictions, that the jurisdictions would go away and develop partnerships between government, the justice system and the Aboriginal and Torres Strait Islander communities. Now the Victorian Aboriginal Justice Agreement has come out of that.

The ethos of our Aboriginal Justice Agreement is very much the partnership and the inclusion of the Koori community in the way that we do business. We have a network of regional Aboriginal justice advisory committees—I think we now have nine across the state—that bring together community and bring together justice agencies at the regional and local level to identify what the issues are and also to identify locally based responses. Our AJACs have grown. At the top of the pillar we have an Aboriginal Justice Forum, which is now chaired by Parliamentary Secretary for Justice, Marsha Thomson, and which has previously been chaired by parliamentarians Brian Tee and Richard Wynne and others. The forum comes together once every three to four months to look at the issues impacting on Koori contact with the criminal justice system. One of the important things about the way that we do business in the Aboriginal Justice Forum is the involvement of the Koori community in the identification of priorities, the development of policies and the development of programs. We have 10 principles in the Aboriginal Justice Agreement that we continually strengthen, and that is about the inclusive nature of the Koori community in the way that the department of justice does business.

Out of the Aboriginal Justice Agreement we have developed a range of initiatives, from the Koori courts—and we now have two children's Koori courts—to the Frontline Youth Initiatives Program, where community organisations develop programs and initiatives to improve Koori youth, to reduce their contact with the criminal justice system but also to develop them as positive citizens. The Frontline program had guidelines that were developed by our community. When they come into justice we have what we call a program management committee. So all the community chairpersons from the AJACs, along with me, sit and decide how we allocate our funds to community programs. That has been a terrific success.

The response from the Victorian Aboriginal Justice Agreement has been a reduction in the rate in which young Kooris come into contact with police, from 75.6 per thousand in 2004-05 down now to 71.6. So our contact is decreasing. There has been an increase in young Kooris in the 10 to 17 age group cautioned when processed by police. This is an initiative that the Victorian Aboriginal Legal Service has led for us in partnership with the Koori communities and Victoria Police. So that is an increase from 27.9 up to 34. We see that we are making improvement. There is a huge way to go but we see that in partnership—and it has to be a strong partnership—we can make a difference.

CHAIR—The committee will be greatly helped by the degree to which we are all able to discuss these initiatives, and yours, amongst each other. Tim, would you like to talk about your work in the context of what Andrew has just been describing?

Mr Kanoa—Yes. The Victorian Indigenous Youth Advisory Council is funded by Aboriginal Affairs Victoria. We are basically a network of Indigenous young people living here in Victoria. We provide advice on behalf of Indigenous young people on policy development, programs and initiatives developed for or that will directly affect Indigenous young people in Victoria. We try to get together four times a year and discuss all these kinds of issues that are affecting us individually and within our communities and also other Indigenous young people. Justice is always a really big issue for us because we see a lot of our relatives, our friends, our cousins, our brothers and sisters getting into trouble. Some members on the VIYAC have also been in contact with the justice system.

We are heavily involved with justice through our being a member of the Aboriginal Justice Forum. Again, we provide advice through that on behalf of Aboriginal young people. We observe the front-line initiatives that are going on, so we can hear what programs are happening out there for young people. Then we try to get out to those communities who are developing these programs to try to provide advice on the best practices for their development and ensure that best practices are being done so they will be accessible for young people, and Indigenous young people will want to do that and are going to benefit from being part of such programs.

We are also about developing the skills and capacities of Indigenous young people who get involved—and not just the people who get involved but also people who tend to come to events that we hold such as regional forums, state-wide gatherings and any other events we have.

One important thing in terms of justice is that we held a community spirit police award where we are awarded police members who are doing great work with Aboriginal young people. That was held here last week and we invited Chief Commissioner Simon Overland to come along. That was about demonstrating the great work police members are doing for young people in their communities. So we are trying to promote positive work that is happening and best practices for others, I guess, to take a lead from.

CHAIR—I am really quite anxious you should take initiatives to intervene in this discussion yourselves without waiting for me. Does anybody want to talk about the kinds of issues that both Mr Eames and Mr Batt were raising? There is a kind of a hierarchy, a pyramid, of intervention that might be taken: before young people begin offending, when they have just offended a bit and when they may have offended really badly. I am really interested in what you think we should be doing at each of those levels—what kind of institutions we might still introduce, what kind of money ought to be spent. It is almost a uniform element of the submissions made to us that it is a hell of a lot cheaper to spend money on programs that address pre-offending behaviour than it is to spend money on prisons. Even before you get to issues of compassion, it is actually cheaper. We would be very interested to know what kind of further initiatives you are interested in, not least because one must acknowledge that the framework that the Victorian government has set up, and the association that many of you have with it, is advanced in the country.

Dr Bamblett—I think all of those things the judges talked about are right from their point of view. I think there are the sorts of factors that lead to people being before the courts and that in many ways you do not address. They talked about underlying issues, and that is so important. There is a linkage between health, housing, education, employment and so on, so all of those things are there for us to see. There is a great quote from a fellow called Schaffer about the cycle of poverty: a house requires rent requires income requires a job requires education and training, knowledge and skills and, of course, a house to do that. So all of those things are important. Nugget Coombs used that in 1965 in an address to a South Australian inquiry into poverty. He further went on to say that it did not matter at what point you interceded in that cycle; you had to address all of those things. So obviously that is that cycle of underlying issues that we need to consider.

There is a growing problem, to my mind, and that is that we have moved in one census period from 60 per cent to 70 per cent—and I was told as recently as last Friday that is now 80 per cent—of the relationships that Aboriginal people have being with non-Aboriginal people. What that immediately brings to mind is the fact that you have 70 or 80 per cent of our young people in households where there are other cultural influences, which means you have 20 to 30 per cent where both parents in the household are Aboriginal. So immediately you have to start to think about this cultural base. I think Eddie talked about the cultural issues, and he said: ‘What’s culture? It won’t get you a job.’ But what it will do is provide you with a better, more stable life. I think that is something that we are looking to do something about, trying to make sure that we move to look at how we can revitalise strength in our culture base with our young people. I think we are doing that more and more.

We run a youth justice centre—we have a hostel and we do court advocacy and so on—and it is an alternative to the youth training centres. But one of the things that we find is that young people are coming to our place of business who do not know who they are—Eddie Batt said that—and where they are from and all of those sorts of things. So, on the one hand, we have a great group of young people who are doing very well in terms of managing and negotiating their way through the system but, on the other hand, we have another group of young people that obviously are not able to do that. I think the justice agreement, for instance, and the greater Aboriginal involvement have been an excellent avenue for negotiation and involvement of Aboriginal people in the things that matter and the things that count.

Of course, in all the negotiations there are those agencies outside the negotiations that have not learnt. Maybe we have not learnt the language, but they certainly have not learnt the language of Aboriginal people. I think that those things are really important to consider. There is a thing like a partnership in education that produces an education policy that says every Aboriginal child, by whatever year it is, should have an education plan. Terrific, but the policy has been there two or three years, and now we are starting to see some rollout of that. So, in the two or three years, you wonder about the further damage that has gone on in the community.

We have all sorts of other things. The homelessness issue is something that impacts on us, yet it seems to me that non-Aboriginal agencies are the ones that actually get the dollars to provide the houses for the homeless people, so where do Aboriginal agencies fare in that? There is the issue about funding that goes to non-Aboriginal agencies. They are told, ‘Okay, you have a target of 200 people and you will need to get an Aboriginal base of’—I do not know—‘20.’ So the money for those 20 will go to a non-Aboriginal agency rather than to an Aboriginal agency. I

think it finishes up in a spirit of competition because of the scarcity of the dollars, and not only that—it is not in the hands of the Aboriginal community. So there are all of those sorts of things.

The Harvard group were very, very clear in the work that they did in North America. They went along without involving the Indigenous people for 200 years and then finally they woke up to the fact that they needed to be addressing this issue of self-determination. It is an issue of actual Aboriginal involvement, Aboriginal participation, policy development, program design, the running of services and the monitoring and evaluation of all of those things. It has to be with an Aboriginal base and Aboriginal participation. I think I have said too much.

CHAIR—It is quite often difficult to talk about these issues because the circumstance of Aboriginal people in Melbourne or Gippsland is so far away from the circumstance of people in Yuendumu or Aurukun. It really is possible to say quite silly things, as if the same circumstances apply in all those places.

Ms Sutton—I would like to comment on the terms of this inquiry, looking at the contact that Aboriginal people might have with the criminal justice system. We are the association for prevention and harm reduction programs. We have looked at some of the data which indicates that a lot of Aboriginal people are imprisoned as a result of drug and alcohol offences. It would be good to take it a step back and see what we can be doing so that Aboriginal people are not imprisoned as a result of drug and alcohol offences. Are there better prevention programs that we could put in place? What are the types of things that we need to be doing in terms of treatment responses? In particular, a recent report by NIDAC, which indicated the diversionary processes put up under the IDDI framework, indicated that people who were offered diversion under that framework were limited on the basis that they had to either not have alcohol as a primary drug of concern or, in some instances, plead guilty to an offence. That to me is problematic in the extreme in that we know alcohol is a problem in the Australian community holus bolus. Also, the idea of having to plead guilty to an offence when you may not necessarily be well versed in the Australian legal system sets you up for even greater disadvantage further down the course. Our argument at Anex is that we would be very keen to see more effort put into reducing the harms associated with both drugs and alcohol so that people do not have to come into contact with the criminal justice system in the very first instance. We think there are better structural ways to do that.

CHAIR—Can you give us a little more detail on what you think they are.

Ms Sutton—Sure. Some of the work we have done is in regional Victoria and also nationally. We have looked at the harms caused by both injecting drug use, which is an area we have a fair amount of expertise in, and other drug use. What we have found is that the drug treatment systems in Australia—and I am probably talking more specifically in general terms here; I am not talking about any particular jurisdiction—generally have a highly individualised approach, whereas the feedback we have been provided by members of the Aboriginal and Torres Islander communities is that their community systems are very complex and that the treatment of an individual as an individual in the context of drug and alcohol treatment is not as meaningful unless you treat the whole family. So you have to reconfigure the way services are provided and modelled so that you then have the capacity to treat families, for instance.

Let's take a hypothetical example. An Aboriginal woman who has two young children and is admitted for, let's say, alcohol treatment may be required, in many instances in Australia, to leave those children with a family member. She may need to travel to another location to undergo that treatment, so she is isolated not just from her family but also from her cultural and community group. She undergoes that treatment and then returns to her community, possibly having been traumatised by the experience by being isolated from them. Also, nothing has changed in the family unit or necessarily in the community. So the purposefulness of that, I think, has to be questioned. There is an argument to be made for how we organise treatment models in relation to drugs and alcohol for Aboriginal people, keeping in mind the sophistication of their cultural and community systems.

Ms Ware—Just adding to that, we are talking about younger people and their contact with the justice system. There are issues around availability and access to treatment services for younger people especially, which we have found as well within the consultations that we have undertaken in the regional areas. That is a particular issue because, if we consider the intergenerational impact of drug and alcohol use within any community, that is currently not being addressed within the service system.

Mr Jackomos—A priority for the Aboriginal Justice Forum—and it is identified in the Aboriginal justice agreement—is to look at options for a women's and children's diversionary centre. That is a key task that is before the Aboriginal Justice Forum now and there is a paper going to the next Aboriginal Justice Forum at the end of March on that. There are a number of different models around that we are looking at. An excellent example is the initiative up at Echuca run by Njernda Aboriginal Corporation called Baroona Farm. From our understanding, it has had terrific results, and that is an initiative that the Aboriginal Justice Forum is looking as a potential model for women's diversionary programs with alcohol and drugs.

CHAIR—Do other people have ideas about what it is that drives offending behaviour and what is best?

Mr Jackomos—Keeping families together—it goes back right to the start. It is about having strong Koori families where there is a strong sense of culture, where you have strong standards, where you are part of a strong community. Strong communities are based on strong families that are based on strong parents and strong values. That is the key to it. You throw in the education and employment and housing with that.

Dr Bamblett—We have a dilution of that. That is the point that I was trying to make before. Maybe I went too long with it. My wife is involved in child protection, and the graduation process from child protection to youth justice and adult prison is very clear. We can see all of those things all the time. One of the discussions that we had was around the fact that the substance abuse program, the jail, the youth centre is the ambulance at the bottom of the cliff. If you are looking for where to go and the things that need to be done, fine, I have no difficulty with the people who provide the services, and we are a part of all of that, but it really is about how do we address the ever-increasing issue of our young people in the system? How do we address the issue of alcohol consumption across the board and the drug consumption, the violence and the sorts of things that are there because we are members of this larger society too? All of those ills of the larger society impact on the Aboriginal community in one form or another. And many times what we are doing is waiting at the bottom of the cliff.

Mr Guivarra—Mr Chairman, could I elaborate a little on what Andrew has said about our program, the police cautioning and youth diversion program. Back in the early 2000s we did a bit of research on the level of police contact and the cautioning levels in local government areas throughout the state. We found that in areas there was high contact and low cautioning, so we did a paper and presented it to the Aboriginal Justice Forum in 2003. Coming out of that was a steering group comprising Victoria Police, juvenile justice, Andrew's unit, ourselves. We developed a program, but we looked at it and said, 'Let's not just push for actual cautionings.' Someone drew the analogy of the New South Wales police having a saying describing their cautioning system as: 'Hook em and tag em, and then release.'

We did not want young people being cautioned and then shot out the door to, hopefully, never be seen again, so we went that extra step and developed the program where the police officer issuing the caution, the youth resource officer and the Aboriginal community liaison officer would do a follow-up in about four to six weeks to talk with the young person and find out what the problems were that caused the offending that brought them into contact with the system. We did a mapping exercise of all the services available. If it was a drug and alcohol problem then we would steer the young person to the drug and alcohol service. If it was a family problem, we would steer them that way. If it was an education problem, we would steer them that way.

We set up two pilot sites—one in the Latrobe Valley and one in the Mildura area. The pilot ran for 18 months. There were two reoffenders in Latrobe and one in Mildura. The program is being progressively rolled out to Shepparton, Swan Hill, Warrnambool and Bairnsdale—in fact, my project officer is in Bairnsdale talking with the police today. It is a total involvement. I cannot give you the number of young persons who have gone through the system, but I can tell you that the reoffending rate is minimal; it is very low. If the committee wishes, we can provide you with a CD of the actual program.

VALS, as the project manager, gets every notification of the caution. We also get notification where there is a non-caution. We can track the kids through the system.

CHAIR—Who conducts the assessments?

Mr Guivarra—Victoria Police through their youth resource officer and the Aboriginal community liaison officer who is employed by Victoria Police. Unfortunately, we do not have ACLOs all around the state—hopefully, when the ERC bid goes in we will get more. The ACLO is an integral part of the whole program. Jemmes Handy in Mildura is known as 'the Key' because she can open many doors. They are all dedicated. They are all terrific people. In Warrnambool, for example, the police officers said when we had the first meeting: 'Why is this only for Aboriginal youth? Can we roll it out to mainstream?' We said, 'Go ahead and do it,' so they are doing it with mainstream kids too.

Mrs VALE—The police officer who arrested the young person was involved in the follow-up also?

Mr Guivarra—Could be. The paperwork goes to the youth resource officer. Sergeants and above issue the caution. The caution does not have to take place in the police station; it can be down at the local park or at the kid's school, which does not happen that often. It is away from the confines of the police station.

Mrs VALE—There is an Indigenous person involved in the follow-up counselling session too?

Mr Guivarra—Yes, the Aboriginal community liaison officer.

Mrs VALE—So there is a police officer, an Indigenous representative and the young person?

Mr Guivarra—Yes.

Mrs VALE—Does the young person's family also attend on such an occasion?

Mr Guivarra—They can. You can have parents, guardians, elders or respected persons in the community there. Sometimes, if all of those people are not available, my client service officer in the area will sit in.

CHAIR—My impression is that this cautioning program is seen by many people as best practice in Australia. Can you explain what adjustments you had to make? Were there problems during the pilot phase that you had to work out? Often, for instance, in these kinds of programs people worry about a net-widening effect, but my understanding is that you have avoided that.

Mr Guivarra—We have avoided it. I do not know whether it is by good luck or good management but we have avoided it. The program has gone up to the AFP in Canberra. They were looking at introducing it. South Australia wanted to have a look at all of our paperwork. Western Australia wanted to look at all of our paperwork to see if they could adapt it and roll it out.

Mrs VALE—I just want to ask Frank one more question on that. It seems that you are a light bearer, Frank, if I could say, on this. During the conversation and the conferencing with the young person on follow-up, is the young person asked to make any commitment to the community at all or is it just important that you actually progress through the offence so that the young person gains a sense of consequence and you see what the young person feels subsequent to the cautioning and the offence?

Mr Guivarra—They can be asked to make a commitment to community—you know, to reconnect or connect, to pull their socks up. You could say to the young person, 'Hey, your behaviour is bringing disrepute to the community.' We had a youth resource officer in Mildura who did a fantastic job. When the project started, he would walk down the street and the kids would see a blue shirt and they would be gone. After a while, he would walk down the street and everyone would come up and talk to him. It even got to the point of parents approaching him and saying: 'Listen, my son is not in the criminal justice system yet but the way he's going he could very well end up in there. Can you have a talk to him and steer him away?' And it has happened.

Mrs VALE—That is good community diversion, Frank, by the sound of it.

Mr Guivarra—Yes.

Mrs VALE—Thank you.

CHAIR—Do the Indigenous youth advisory group have a view of this particular scheme?

Mr Kanoa—Yes, sure. We think it works. We definitely support it. I have been involved in the community justice panel through VALS, living in community. My focus was supporting young people who had a police interview or something like that. We do support it and we also think that peer support and peer influence could be pretty vital in helping young people in such a program.

Mr Jackomos—In Mildura, as a result of the caution project, there was a 45 per cent increase in cautioning rates for young Kooris up there and there was a 32 per cent increase in cautioning rates in Latrobe. I think the projects are \$15,000 each. The impact has meant that \$15,000 has been a terrific investment.

CHAIR—Do you mean \$15,000 per district, not per person?

Mr Jackomos—No, not for a person. It is for a project, not a person. There are terrific results.

CHAIR—How does that all relate to what you were speaking about, Elizabeth?

Ms Sutton—It is fantastically positive in that it stops people progressing through the justice system and then going to prison. In our submission, we talked about some of the harms that occur in prison as a result of things that occur in prison—such as tattooing, the sharing of injecting equipment and those sorts of things. From our point of view the key thing to do is to keep people out of prison. We also talked in our submission about the very much higher rate at which Aboriginal and Torres Strait Islander people are imprisoned. I think programs like this go some of the way to hopefully—we hope—reducing that disproportionate rate.

In relation to young people, surely it can only be a good thing if they are diverted away from prison and therefore hopefully diverted into either treatment and also connect more with their community, because I think the comments that have been made about community are really important. I am not here in that capacity, but our experience across Victoria has demonstrated that the more connected people to their community, the better the outcomes are generally in relation to particular programs that they might participate in. I do not know if that answers your question.

Ms Ware—I think also the focus, because we are talking about younger people, really does need to be prevention in relation to drug and alcohol use. That is where the opportunities lie. Once it gets to the treatment phase there are other things that often go with it in terms of lifestyle and, unfortunately, offending behaviour, particularly those that are at risk of transitioning to injecting drug use from non-injecting drug use. There is often a correlation there between an increase in offending behaviour as well. We are particularly concerned about those issues. Liz mentioned the harms that can go with being imprisoned. There might higher rates of blood-borne viruses experienced by people in prison. There are serious harms that can occur to an individual beyond what harms are already occurring within their life outside of prison.

CHAIR—Mission Australia has been singularly modest so far. I do recall that in your submission you have actually laid a lot of emphasis on questions of cultural identity. It may be relevant to discuss that in this context.

Ms Hampshire—We are a national non-government organisation delivering a range of services to children, young people, homeless, employment and in the context of that also deliver a suite of post-release programs, some of which are particularly focused on Indigenous young people but more broadly because of the focus of our organisation we work with significant numbers of Indigenous and Torres Strait Islander young people, children and families. Our experience across the country is that this area is done very patchily. I think the data would reflect that. Yes, we have got some better data in Victoria. We would also be arguing that we want to lift everyone into a better space. Whilst it is good that there are some shining light in Victoria—and let us also not be complacent about how we are doing in Victoria—clearly in other states like WA and the Northern Territory the data is much worse.

Across the country the focus still remains largely in the incarceration piece rather than in the early intervention space. As Dr Bamblett suggested, the interconnection between a whole range of issues is not being adequately addressed. What we see in the juvenile justice system is a result often of an education system that has not worked appropriately, a health system that has not et cetera et cetera and the need to focus much more in the very early years. It is not a surprise to us now, surely, who ends up in our incarceration when we have some young people who start to drop out of schooling incredibly early. We are working with eight-year-olds in various communities across the country who have started to drop out. The patterns are set very early on, but as a nation we do not seem to be able to link our systems together sufficiently enough to make sure that those young people do not end up in a juvenile justice or an adult system. We also have a tendency in Australia in the early intervention space to invest in pilots. I think we have all been experiencing that. Sometimes even when the best evidence is available that the pilot is much more effective, it does not become systemic policy.

CHAIR—Just to intervene, everybody around the table agrees with those observations, including me.

Ms Hampshire—There are two other challenges. We do not have a lot of longitudinal data, so we might get some good outcomes in the short term around young people being diverted from a particular course of action. We would be particularly suggestive of the fact that those young people need to be supported over time—not just at the diversion point. Having a diversionary process is really important, but you actually need to support them for as long as they need support across all of the domains that others have spoken about.

Our other sense is that, in the early intervention space, we are often all so keen to be seen as cost effective that we cut our costs so much that we deliver a program which is, yes, vastly more effective than incarceration but we prune ourselves back so much that we end up arguing that our program at \$3,500 per young person is so much better than one at \$165,000, whether or not it is actually sustainable to deliver that program. I know we get caught up in the Treasury arguments of ‘show us that it works’ but, conversely, the data would say that incarceration does not work, and Treasury does not have a problem with that. So I think we need to be quite bold and clear about what a program does need. It often will require multiple supports. We do not have a culture in Australia where we have a pooled funding opportunity. COAG perhaps offers that light. In the UK it is quite common for director-generals across departments to have shared accountabilities for a range of outcomes. So it is not just what Juvenile Justice or health or education is doing. There is a shared outcome, for example, around ‘How are Aboriginal and

Torres Strait Islander young people doing?’ That would then drive some quite different approaches right down the system, including at a local level.

Often a young person has multiple case managers or multiple people involved in their lives, and all of them have a tiny bucket of money. The capacity to work in different ways across those portfolios would get us some better outcomes longer term. I think there is a critical piece around assessment. What are the whole needs of the adult or the young person? Can we work in all of those areas? Can we work with siblings, family and institutions? Can we work with the community? Can we provide the long-term flexible support that is required? For some young people, it will need to be only short term; for others, it will be long term. Often our program guidelines across the country have very time-specific programs, which are not relevant or appropriate.

Others around the table have clearly emphasised the importance of culture. We run a program in Dubbo—and I think you are going to be in Dubbo next week—called the Dubbo Leadership and Cultural Development Program. We were asked to run that after much consultation with agencies in the Dubbo area, which came about because there was a concern about Aboriginal and Torres Strait Islander young people dropping out of school very early. We started the program about five years ago. At that time, the concern was around year 8s. It is now a concern around eight-year-olds, including through the juvenile justice system. Many of those young people whom we worked with knew—as they would describe themselves—they were black, and that is all they knew. They knew little of their extraordinary history and culture, and so the program has been designed to work very closely with Aboriginal and Torres Strait Islander elders to help that young person to realise their culture. It is also seen as a leadership program. Rather than it being a deficit based program, ‘What don’t you have?’ it is a strength based program, ‘What do you have, and how can we build on that?’ The school retention rates have been quite extraordinary. It has been the partnerships, the flexibility of working across multiple agencies and the extraordinary support from the local Aboriginal and Torres Strait Islanders that has got some of those things happening. Our systems do not always support that really flexible approach. Often it happens more easily in regional and rural areas because you have to collaborate there; there is no way out. But we need some systemic ways both between the Commonwealth, the states and the local agencies to make some different approaches possible.

CHAIR—At the community level, the issue of dozens of agencies attending to some small aspect of a general problem has obviously been well enough recognised. With the so-called Closing the Gap program, which the federal government instituted a little more than a year ago, in 23 communities the government is appointing somebody called a business manager, who is supposed to be the person through which all those myriad agencies work. If you have a community of 500 people, that really matters. It is actually harder to know how you can, as it were, manage the case of an individual, without this extraordinary fragmentation of attention, which, insofar as it exists, simply undermines any effectiveness, does it not?

Ms Hampshire—We have started a program much earlier on than juveniles or adults called Circles of Care. It is operating out of Inala, the most disadvantaged urban community in Brisbane. It has a very high proportion of Aboriginal and Torres Strait Islander people in its community. The circle of care notion is schools based. The idea longer term is that every child in that school will have a circle of care, but we have started with those who are most marginalised and most vulnerable. The idea is that you actually establish a circle of care around the individual

child and that circle can involve anybody. It needs to be facilitated by a very highly skilled worker, but we are not using the language of case management. So it would involve teachers, parents, significant others, siblings et cetera and together that group identifies what the plan is that they are collectively going to take responsibility for over the next 12-month period. The circle meets every three months or so to see how things are travelling, but if there is a major incident in the child's life—it might be a family death or it might be a potential school discipline issue—the circle reconvenes. To date, it seems to us that the more localised approach where everyone sits around the table talking not about a case but about the real live child in the context of their family, who are present in the circle, is small scale but we are getting some really important results. I think sometimes we have professionalised the language of how we work with people to such an extent that we lose the humanity of them.

CHAIR—No-one else can understand it, including the local member of parliament.

Ms Hampshire—Indeed, but this approach of Circles of Care is actually showing some important results for us.

CHAIR—It seems to us that this is a quite critically important area for discussion. I am interested in what other people think too about the problem of patchiness. It has happened already in our conversation so far that somebody says, 'There is a terrific program at Mildura' or 'There is a terrific program in Coburg,' but it seems to me we never talk about any kind of systemic arrangement that is available in the way that public education is. There must be some problem about this because we have failed so often for so many years to do it, but I would be very interested in what people have to say about it. It is very interesting that the further you get into the system of justice, the more systemic we are. So we actually have Aboriginal legal services everywhere. Frank complained to me a great deal that he has not got enough money at one stage or another, but we do have Aboriginal legal services in place more or less across the country and they have a significant coherence about them, but further down the pyramid of possible intervention it gets more and more dispersed.

Mrs VALE—Further to that statement, I wonder if I might ask Anne if she has any suggestions about what strategies state and federal governments could put into place to actually make these best practice programs continue to work, receive the appropriate funding and become systemic?

Ms Hampshire—One thing I was going to mention is that I think there is a real leadership role for all governments in this area because this is not a publicly popular area. I would actually call on governments generally to be setting targets for reducing incarceration and to be bold in that. In some areas the community will lead the politicians, but this is unlikely to be one of them. We as an organisation would really urge all governments to be bold in this area and to set the bar higher.

In terms of dissemination, there is a starting point about what you do with pilots and I think that is a fundamental principle. If a pilot works, making sure that there is some way of testing whether it does work and in what circumstances, then I think there is a moral obligation, or close to it, on the government's behalf to then embed that more systemically, although it needs to be locally nuanced et cetera. Things like the clearing house have been set up. I think that is a start, but I am not sure that is touching people more broadly in terms of dissemination.

I would argue that there is a potential for actually embedding at a pretty high level KPIs that require DGs, for example, to work together. I know it is a very high level but I do think some shared agreements between the states and territories saying that 'this is a nonnegotiable and this is what we are collectively working towards' should then drive practice further down the line. We can have fantastic people working on the ground in collaboration but unless there is the framework that actually supports them, ultimately we rely on people's goodwill at the local level to work collaboratively together. They actually need the frameworks that support them to do that.

Mr Jackomos—There is a strategy in the Victorian government's Indigenous affairs report that reflects the Victorian Indigenous affairs framework. To follow on from Anne's comments, under that there are a range of targets in there that the Victorian government has agreed to about reducing recidivism and reducing contact in respect of family violence.

But if I could go back, early on I mentioned our front-line program under the Aboriginal Justice Agreement. Under that, Victorian community organisations have funded a whole range of positive initiatives that they have developed themselves and that are making significant improvements in reducing contact. Most of these positive initiatives that community organisations have developed revolve around sport—getting young boys involved in sport, saying that social activities are their responsibility. There is a soccer club up in Mildura, for example. In Melbourne here we have the Fitzroy Stars. That is doing a terrific job and there are non-alcohol and non-drug events there. Ballarat community run training programs on Murray River canoes and working with the police. But there is a whole range of these positive initiatives and this is about making sure that the kids steer away from alcohol and drugs. It is about building strong citizens. We see an important part of the Aboriginal Justice Agreement as being about diverting kids before they get into trouble or before they become interested. That is where we need to do the work.

CHAIR—Most of you have been talking about the importance of doing things before kids get into the system. But what about when they are? Mr Batt was talking about the great problem that he has as a judicial officer in finding an appropriate place to send somebody that he is going to slot—that he cannot just say, 'You have gone beyond the caution.' However good a program may be in trying to bring families together and all the rest of it, you have got this individual who is going to be withdrawn from society to some degree or other. I have an impression, but I am much more interested in yours, about the same problem of fragmentation and patchiness for those kinds of arrangements—that there are some things that seem to work well but there is no systemic approach to the problem of finding open institutional diversionary arrangements. I am really interested in what you have to say about that.

Dr Bamblett—Governments are elected for a period of three or maybe four years and there is a commitment for that period of time that you can actually get. The programs that we have are all short term. We should be the highest flyers in the world—we have been on that many pilot programs. I am serious. It is the sort of thing then about not only that we have people who work in courts and people who work in youth houses within the centres—we have a whole range of network of Aboriginal people who are employed within the system.

It seems to me that we start a program and run it for a period of time, and then it shuts down. For whatever reason, it has run its time. The Baroona Farm project that Andrew referred to is

finished because there is no money for it. Warrakoo is finished and they have moved onto a health focus and so on. It is the short-term nature of the area both in terms of the programming and in terms of the people. We constantly have to deal with, educate and work with new non-Aboriginals within both the NGOs and the public service. So there are those sorts of issues that guarantee that the lifespan of your program is short.

Then there are the other sorts of things we constantly have to deal with. I am sure Aboriginal people in the Northern Territory would say that they have a base to exercise their own self-determination, along with the people in Victoria, in terms of your earlier comment. But it is really about Aboriginal voice and Aboriginal people. The Victorian Indigenous framework is about Aboriginal people standing up, doing a number of things and saying, 'These are our rights,' but also saying, 'These are our responsibilities and we have to accept those.'

If Closing the Gap, as a direction for a national government with impacts in the states, is there with the dollars to make things happen, why then isn't there a greater collaboration between justice and the Department of Human Services in terms of looking at the needs of young people, particularly if you are going to have a rollout of programs that are going to impact on young people's health? We have put forward a program that we are fairly confident we will get funding for, and it is about health checks, because there is a health focus. We do oral health, mental health, your eyes, your ears and certainly sexual health. One thing that we do not do, and it is not anywhere, is cultural health. We are now trying to work with some people in the medical profession on a diagnostic tool to gauge that.

While we are doing these things about primary health, we also need to think about all of the person. There is no reason from what I can see, if we have an agreement with the Department of Human Services and the justice department, why those two should not be able to work together to take some of those Closing the Gap health goals and apply them to some of the issues that are there in the justice arena. The theory is that government has a responsibility to govern for all its citizens but it also has a responsibility to ensure that the needs of the individual groups within the community are looked after. If you have one program that has money and you have one program that is short of money, you try and figure out how you actually manage those things in a better way.

Ms Ware—From the information that we have received when we have been out consulting with communities, especially on the community controlled health organisations that have fairly significant capacity issues in terms of funding, the mere process of collaboration and providing an integrated service is not specifically funded. The services are funded by their roles. The hours that they are funded for are for client contact or for administrative work. The actual role of collaborating within your service, let alone across services and in particular between community controlled organisations and mainstream services, is just not funded. Yet Closing the Gap and other initiatives are based on the assumption that it is an integrated service. So having more specific funding tied to those processes in particular is important, and I am sure that people on the ground would be able to tell you what that means for them. I think Anne mentioned that we are relying on people's own initiative to do that collaboration and that information exchange. Frankly that is not good enough for the clients or for the people that work in those services. There are real capacity issues in these community controlled organisations, whether in terms of workforce or funding, that we need to address. It seems to me as if initiatives like Closing the Gap are just not doing that.

Dr Bamblett—But they can.

Ms Ware—Yes.

Mr KELVIN THOMSON—I support what Dr Bamblett is saying about short-termism in funding and grants arrangements. It is in part the case that governments like to be able to announce new things, and that is the appeal of pilot programs. They are more likely to get media attention than simply a continuation of that which has gone before. But I think they are also used as a something of a vehicle for exercising control and keeping agencies and NGOs on a very short leash. While there is no doubt that governments and taxpayers are entitled to decide that this program is not working or this way of spending money is not working, and they are entitled to change priorities whenever they consider that to be appropriate, I think that the short-term way we do things with a lot of review, a lot of reporting and so on is not constructive. I think it would be better if we had programs which were rolling on and people had some expectation that they would continue.

Ms Hampshire—In terms of what happens in centres, as it currently is it varies across the country. Certainly education is absolutely critical, but it needs to be a particular type of education. Obviously, many Aboriginal and Torres Strait Islander young people will not have the literacy and numeracy skills to partake of mainstream education, so often that component needs to be built in across the country. It is not universal. Also across the country broader things around life skills are not universally included. So when a young person goes back into their community and their family, are they able to deal with anger? Are they able to deal with conflict et cetera?

I think the key thing that happens in the institution requires a really fine-tuned, high-quality assessment of what this young person needs, not for now, not to keep them in this institution but to actually prepare them for when they go back to their family and their community. I do not think that is always universally done as well as it might possibly be. This includes linking with services as we talked about with drug and alcohol services.

One of the key issues, particularly in New South Wales—and I know you will hear about remand and bail next week—is the post-release transition. It is done in a very patchy, piecemeal way. Part of that is around having a lack of clarity about who is responsible for what, particularly in the juvenile justice system. You have juvenile justice having a role and non-government organisations. Is one the police person and another the warm and fuzzy person? Do they have shared accountability? How does that actually work? It varies, certainly across New South Wales.

In doing the assessment post-release, there are three risks which are looked at and identified in New South Wales: alcohol and other drugs, violence and sexual offenders. We would argue that there are a whole lot of other things that need to be taken into account to identify what level of support a young person might need when they return to their family and community. As I say, I think it is done pretty patchily across New South Wales. Also, the maximum amount of post-release support in New South Wales is around 24 weeks. That is relatively short, I would suggest, for the sort of work that needs to be done on an ongoing basis. A relationship is built with a key person and then after 12 or perhaps 24 weeks that is severed.

In terms of Julianne's comment about collaboration, collaboration does not just naturally happen. There is actually a high level of skill required. Some of that goes to the sort of academic training that we are calling for our social workers and others to have. I think there is almost a new core competency required of many of our professionals—to work fluidly and flexibly across disciplines and across sectors.

The other thing which happens in New South Wales—and I hope not in Victoria—is that some young people get treated as adults because they are serial offenders, for example. The consequence of that is that when they are released they are not handled by juvenile justice; they are handled by probation and parole. As a consequence, they are not able to access the suite of post-release programs that would help them stay on track. So there are some real counter-policy initiatives happening, certainly in New South Wales—but you will hear more about those next week, I am sure.

CHAIR—I am sure we will. Can I use this analogy: the kind of problem we are talking about now, which is the uneven provision of support amongst individuals and the uneven availability of support across regions, used to exist with just the same kind of intensity in the area of environment. The question used to be: 'How will we give money from government or raise it as non-government organisations and somehow or other apply it on the ground in a way that will stop the degradation of the environment instead of just making a whole lot of little interventions all over the place that sometimes work and sometimes don't?' In more recent years, government and the community have evolved kind of an institution. They are called natural resource management areas. In New South Wales they are called catchment management authorities. They do in fact provide a framework—not to perfection—within which activity can continue coherently. There is actually a plan for what should be done in any particular region to fix up various elements of the environment. There is a capacity to therefore direct expenditures with some priority. I am not saying it is perfect, but it is a revolution compared to what used to exist. I am wondering if that analogy would prompt you to make any suggestions.

Ms Hampshire—I think there is another example closer to home. There is a program that involves people, which is still in its early days, which is called Communities for Children. It began under the previous government and has been taken on, under an evolving name, by the current federal government. It is community based. It is funded by the Commonwealth, funded in 45 high-need, disadvantaged communities where there is an initial identified need to work in the nought to five-year-old age group. There is a national framework, designed by Canberra, but then Canberra was unusually bold and identified what were called facilitating partners in each of those local areas who then had to bring together all of the key stakeholders in that community to develop a plan for spending the amount of money which went with that. The facilitating partner could only have a proportion of those funds, so it could not be a money-grabbing exercise for big NGOs like us. The facilitating partner actually had to take a facilitating role and bring together around the table the key stakeholders to identify what initiatives were wanted in the community.

An evaluation, three years down the track, found that the results were better than expected. Almost universally, the evaluation showed that stakeholders really liked it. They did not want to go back to a model where they had to compete against one another for funding. They did want the freedom to plan locally, within a bucket of money, but also within a framework which said: 'These are the sorts of outcomes we want you to achieve. You decide how you want to achieve

them.' The program has now been expanded to the age range nought to 12 because, obviously, nought to five-year-olds have older siblings. It is all pretty interconnected.

So some of those models where you have a framework set in Canberra or in Melbourne and then you give freedom to the local community and you ask them to work it out are not too dissimilar to the resource plan. Again, it is not a perfect model, but it is a model which seems to have got quicker results in the three-year period than the UK did. So our results in three years are equivalent to the UK results in six. That could say something about us rather than the UK, but it does suggest that that facilitative approach, and actually charging communities to work it out themselves, is potentially a way to go.

CHAIR—That program is dealing with the absolutely basic circumstance of nought to five-year-olds being put on the right track. Is there some kind of analogy with the way we might deal with diversionary programs for people in their late teen years who have already done a bit of offending?

Ms Hampshire—I am happy to dive in, but others might want to speak.

CHAIR—I am just asking for people's ideas about the best way systematically to try and organise diversionary programs for kids who have got into the system but not far.

Dr Bamblett—There are the sorts of things that have been mentioned. Education is a key; it is one of the things. There has to be other activities of course that our young people are involved in. There is a young man over here with a group that represent young people, and they are the logical sort of Aboriginal voice for us to be going to. So there are some of the things.

In terms of the programs, I chair the state Aboriginal justice committee and I did chair the national one when there was one. It is the sort of thing where we have got an organisation that deals with one of the programs, the youth justice program. We have got quite a task in actually bringing in the kids. They come to us because they have been on order. We get them on an order to come and stay with us. You have got to think about education. You have got to think about employment at that stage. You have got to think about reunification with family. You have to do all the things around trying to get a balance with the kids so that they can spend the time with us productively but still think about when they actually leave—and it is when they go home.

One of the issues that always seem to come up is the intergenerational impacts. If a young person has been in the system in a youth centre for a period of time and has been traumatised in any way, there are intergenerational impacts that that will have not only on him but on his family. So there are all those sorts of issues that we are constantly trying to deal with and short-circuit in terms of the offending behaviour. Sometimes it is successful. The Children's Koori Court is a great example of something that the community can have more involvement in, and it is a similar sort of thing with the programs. There are other agencies that have particular expertise that you look to do things with—but, again, realising that you can dream, that you can actually think that there might be something that you can do other than be a subject to the justice system or a subject to all the sorts of things that are there and the pressures that our young people face.

Mr KELVIN THOMSON—Chair, I would like to hear a bit more from the Indigenous youth advisory representatives. I will frame it this way. Your mission, should you choose to accept it, is to keep Indigenous young people out of jail. You have significant amounts of money and power. What would you do?

Mr Kanoa—We would focus on programs that are not solely directed at justice. From our point of view we think there is a need to work with those people who are getting along in life just fine but not necessarily getting the support they need to push on further to achieve their goals and outcomes. Because of that not happening, they then tend to come into contact with the justice system. They come into contact with peer groups that sometimes would have a negative influence on them.

We have been talking about having a collaborative kind of approach and we think that we would put that money into government agencies, departments and organisations collaborating together to develop programs for Indigenous people—young people as a whole. We would not necessarily focus just on the young people coming into contact with justice, because we think the issue lies with them not having the kinds of programs or activities that they need to get on positively in life. Travelling around the state of Victoria through a Community Conversations project, we had a conversation basically with different communities, and a lot of the feedback was that there is no funding there for our kids who are just getting by. The funding tends to go to the high achievers and it tends to go too much, I guess, to the people in justice. We understand we are talking about justice here, but from our point of view the issue is that we need that support as people in society and in our community.

The other thing we would like to see funding go towards is giving us a space, an opportunity for our voice to be heard within any kind of program development in our local communities and even state-wide and nationally. We want to make sure that we are getting heard and that our view is being valued by our community members and government departments as well. Another thing we would like to focus on is the actual development of a child from the early years. It is critical to understand that, when you are born into a family that is dysfunctional and you miss out on that nurturing that you need as an infant, that plays out in terms of the issues that affect us when we develop. If we are not given our hugs and cuddles and kisses from our parents when we are babies, we are going to develop a mechanism to deal with issues involving our psychological and childhood development. We just want to make sure that the children and infants also have funding going towards them. We do not see it as being young people specific; we see it being the whole development of a child, from pre-birth.

Miss Slater—We have already established that there will not be one bandaid solution to fix the entire problem of juvenile justice and Indigenous young people. The idea of trying to create some programs to deflect young people from entering into the justice system would require more time for me to comment on because I do not have experience in this field. I can give some reasons why young people do enter into the justice system from my own age, from communicating with young Indigenous people from across the state. It is very difficult to live as a person in society—there is so much pressure. It is important that there be more education for young people, to support them to develop into adults and to have the self-esteem and confidence to live as strong and confident citizens. It is important, as Tim said, to have space to speak about your own issues. That will assist us to develop confidence in each other and self-confidence in ourselves. We need to develop a sense of belonging and a sense of community connection, and a

strong sense of cultural identity. I guess a reason young people do fall into the justice system is loss of community belonging and loss of sense of their own personal identity.

Mr KELVIN THOMSON—Was your group involved in the National Indigenous Law and Justice Framework?

Mr Kanoa—No.

Mr KELVIN THOMSON—That is something that the Standing Committee of Attorneys-General has recently worked up—I do not know whether anyone else has a view on either the content of that or its implementation?

Mr Jackomos—The Victorian government through the Department of Justice has been involved in it, along with other departments. We actually see that there is significant merit in it progressing. It is actually a very good avenue for the exchange of best practice across jurisdictions. I think there is an opportunity for it to be further refined, with more community buy-in. I would like to see that as the way to go.

Dr Bamblett—We are actually still waiting for a response about the replacement National Aboriginal Justice Advisory Committee, which I believe would be an excellent tool for the government to have and to use. It has been a long, slow process since the last one. If the governments across the nation are going to be setting a direction for us then, most certainly, we would like to participate rather than be recipients.

CHAIR—Could I just ask Jarrah and Clarisse this question: do you think it is important that young Aboriginal people get really strong role models to overcome the kinds of difficulties you were just describing there?

Miss Slater—Yes.

Ms Jones—Absolutely.

CHAIR—I am sure that Cathy Freeman's clinics for athletics are a good thing.

Ms Jones—It is also about accessibility to a role model whom you can look up to, whom you can talk to, who will provide you with guidance and realistic assistance in your daily needs. It is definitely easy to become lost in society today, especially if you do not have your cultural connection or do not have strong family backing or someone to turn to. I guess that is what we at VIYAC hope to provide—a network for young people to come together and to provide support for one another in numerous different areas. Leading on from what Tim said about our concern for children from a very young age, we also have a strong concern for young parents and the need to assist them. Being a parent is a struggle for anyone, at any age, but especially for young Indigenous parents. It is important we help them and ensure that they have assistance in their paths and that they can be the best parent they can be to their children. When you build and strengthen that relationship and provide a fantastic family environment it really assists to deter later problems that a lot of youth encounter within the criminal justice system.

Mr Kanoa—Can I just add that, in terms of positive role modelling, I think it is really important. We tend to glorify sports stars as our role models. While I think that Cathy Freeman has achieved a lot and AFL stars and rugby players have also achieved a lot in terms of assisting people living in dysfunctional areas or whatever we also need to ensure we have role models we can relate to. If we look around the table, in my eyes Andrew and Frank are role models to us in our community here, but it is something that we need to be able to relate to. I have a professional role model and I have sought his mentorship, but I do not think we can take a blanket approach around mentoring and role modelling. It is about who we as Aboriginal young people can relate to. As an Aboriginal young person, I think our elders in our communities, our uncles, aunties and parents are really positive role models for us. Even though, from a personal perspective, sometimes they have not necessarily shown us the best way in life, we still love our parents and grandparents. Also, we have a real peer influence, so people who have been through a similar upbringing to us and have achieved against the odds are people whom we tend to gravitate towards in terms of role modelling and positive influence.

Ms Hampshire—We actually run the National Survey of Young Australians. It is the largest survey of young Australians. A terrific representation of Aboriginal and Torres Strait Islander young people fill in that survey. Often, our media and, more generally, the community work from, as I said earlier, a deficit base about what Aboriginal and Torres Strait Islander young people do not have rather than what they actually do have. That survey shows a couple of things of interest. First of all, it shows that Aboriginal and Torres Strait Islander young people value getting a job more highly than do other, non-Indigenous young people, which would suggest a quite different image from the image we often hear about or see in the media.

The other thing it identifies is that one of their two top concerns is alcohol, so they are actually worried about alcohol. The other one that is very high in their levels of concern is regarding body image. I would argue that the data is not saying that Aboriginal and Torres Strait Islander young people are concerned about their own body image but, if we think about how they are portrayed in the media, it is often the negative stories that are portrayed and over time that sort of thing has a really deep impact on young people generally. I agree very much with Tim that it is not just about sporting heroes; it is about who you see on the TV in the television shows, in the news et cetera that can have a deep impact on the psyche.

To get back to your earlier point, Kelvin, you mentioned when asking Tim that ‘you have the money and you have the power’. In a large sense, the second one is almost as important as the first, so I think one of the critical questions is: are there incentives or, conversely, disincentives for organisations and people to work together? Equally, are there structures that support or work against that pulling together? Having the money is only part of the story—it is actually about having the authority. I think we can set up systems which work against us working together. For us, that is a really important systemic challenge.

Mrs VALE—The value of the program about which you were speaking earlier and the fact that the government funded it with a certain amount of money and put it to the community, saying, ‘These are the objectives; you figure out how to meet them,’ is that that is a measure of having an impact on your own circumstances.

Ms Hampshire—I think the organisations on the ground were freed up to do what they inherently wanted to do but what contracts often work against.

Mrs VALE—They were empowered to find their own solution?

Ms Hampshire—Yes, and I think we need to similarly empower government bureaucracies so there are not disincentives but incentives.

Mrs VALE—Andrew, when we talk about the contact that young people have with the juvenile justice system—like their first contact with police, their first time coming into court, a period of incarceration and release programs—are any formal assessments conducted at different points to ascertain different psychological situations or drug and alcohol abuse?

Mr Jackomos—There are, but I do not have expertise on that side. That is with the Department of Human Services. Unfortunately, the committee would need to refer that question to the Department of Human Services.

Mrs VALE—Does the Department of Human Services conduct such assessments?

Mr Jackomos—Yes, the Department of Human Services is responsible for child protection and youth justice in Victoria. The question is specific to that department.

Mrs VALE—So we should also ask them about appropriate responses or what they do subsequent to those assessments?

Mr Jackomos—Yes.

Mr Guivarra—It has been interesting sitting here listening to this inquiry into the high level of involvement of Indigenous juveniles and young adults, but no one has even touched on policing methods. Tim talked about the awards for the coppers that were doing good things, but there is evidence out there—and, fair enough, it is anecdotal; some complaints have been made—of the methods used by some police officers involving Aboriginal and Torres Strait Islander kids. In Shepparton the Rumbalara Aboriginal Cooperative introduced a night patrol system. Rather than have the kids strung out along the street waiting for the bus to come around and pick them up they said: ‘Okay, there’s a bus stop that is not used at night. Wait there; we’ll come past and pick you up.’ So eight or nine Koori kids stood in a group at 10 o’clock or 11 o’clock at night and the divvy van came around and pulled up: ‘What are you kids doing? What are you waiting here for?’ ‘We’re waiting for the bus.’ Or the divvy van would be parked around the corner watching the same kids.

Policing methods: you get police officers saying, ‘We’re doing a great job but we’ve got a job to do—we can’t do this, we can’t do that.’ There are some great police officers, do not get me wrong, but there are some people who should not wear a blue shirt because they just do not have the wherewithal to deal with not only Aboriginal youth but anyone. They just should not be in the job. You hear stories about policing methods. Recently a young kid was charged with receiving a Freddo Frog, for goodness sake. In the west, in Kununurra, there was an 11-year-old boy who was on bail and had a seven to seven curfew. He was with his mother and they had been to see a Harry Potter movie. He breached his bail, so the police—the khaki cowboys—locked him up for the weekend. And you wonder why our kids sink further into the system when they are treated like that. I would sooner not see them in the system. I would love to see

cautioning and diversion programs work 100 per cent. Keep the kids out of the system. Keep me out of a job! The focus, or a part of the focus, has got to be on policing methods—end of story.

Dr Bamblett—It is not end of story.

Mr Guivarra—No.

Dr Bamblett—The local thing in Shepparton is that no more than four Aboriginal kids can be together at any one time on the street. Goodness help you if you have a big family with more than four—you cannot walk together.

CHAIR—That is part of a more general law about association is it?

Dr Bamblett—This seems to be unique to that part of the country. There are search laws that are going to have a hell of an impact on young people. There is going to be a whole heap of other the things that they think the changed laws will bring to us and will bring more work for the justice system. We are going to Shepparton very shortly because we need to do something for the community and the fact that the kids cannot hang together—any more than four and you have trouble. It is crazy.

Ms Hampshire—In regional New South Wales we find a similar situation and we find also that courts have few opportunities for identifying stable and secure accommodation, which is probably something that the magistrates referred to earlier. Homelessness services are not there, there is no alternative and they have come some distance to travel in a regional area. This is multiplied across many communities that we work with and so the only likely outcome is incarceration and remand. We have significant numbers of people on remand who will never subsequently get an incarceration period once the hearing happens.

CHAIR—Do you think, in that context, and Victoria is more closely settled than any other part of mainland Australia—more consistently settled—that even when you get into New South Wales you are beginning to talk about remote communities. I think the largest Aboriginal population in Australia is in the western suburbs of Sydney—

Ms Hampshire—Blacktown.

CHAIR—but you are already talking about regional New South Wales even before you get to Queensland and the Northern Territory.

Ms Hampshire—Yes. We are talking Taree, Kempsey and the like.

CHAIR—I apologise for being slightly fixated about this issue, but, again, you are coming back to it. As soon as you leave a metropolitan area, at least in Victoria, you find that the available diversionary services begin to disappear. I am wondering whether you have some ideas about how NGOs, for instance, might fill that particular gap—funded by government. It is a substantial problem. It affects people in Victoria, I think, less than anywhere else in Australia; although, it obviously has some relevance even in Gippsland.

Ms Hampshire—One initiative that we are trying in the homeless young people space, which may or may not translate, is identifying the likelihood of there being a short-term requirement. You would need to have highly skilled, well-screened community members supported by an organisation. They might be able to provide some support accommodation for a short period of time. That could be highly risky and there are obviously risks involved. We are trying it in the homelessness space. I do not think anyone wants the sorts of young people who are currently being held on remand held on remand, because, as I said, most of them will go on and not be incarcerated. Normally it is just a relatively short period. So, if there were some pilots, of something like that, where you could identify some alternative places to keep people safe—for example, in other families, perhaps within the Aboriginal and Torres Strait Islander communities or more broadly for a short period of time until we can have the court hearing and it is all dealt with. Perhaps that is a way to go. I appreciate there are risks involved in that for everybody. But it must be preferred to the risks involved in incarceration.

Dr Bamblett—From an Aboriginal viewpoint, I would hate to think that you would leave here today with the idea that everything is rosy in the garden of Victoria in terms of Aboriginal issues and Aboriginal young people and the issue of diversionary programs. I think ‘early intervention and prevention’ has become pretty cliched. It rolls off people’s tongues without any difficulty. Yet you try to figure out what is actually happening. I know that we have within metropolitan areas of Victoria almost half the Aboriginal population of Victoria. In country Victoria and right across the board there is the issue about the programming development that involves Aboriginal people, about the sorts of things that require sustainability—obviously dollars—and about the sorts of abilities to get the people, because, if you have not got the right drivers in the program and in the community, it ain’t going to work.

It is the sort of thing where you have to look and say: okay, these young people and their experiences are the sorts of things that are required and they are just so valuable. The Aboriginal community—from someone who has been involved and worked for a long time in this place and across the nation—in our part of the world has a whole heap of people who are committed to do a lot of good work and we have a lot of young people who are continuing to amaze people with their outstanding capabilities. They are the sorts of things we are after, and they are not just in Melbourne; they are in country Victoria too. They need more support and they need all of the sorts of things that you would want for anybody anywhere. So the divide between city and rural creates some problems. Nonetheless, we have the potential to do things. We just need to continue the resource base to do that. And I am sure you must have heard that enough.

Mr Guivarra—Talking with my counterparts from legal services all around the country, they each tell me that there is a chronic shortage—and we are talking in the context of youth and young adults—of bail hostels, for want of a better phrase, for young people, so that young people can be bailed rather than being locked up and remanded. At the moment, they front court, and they have not got safe and secure accommodation, so it is: ‘Mind your fingers. The doors are shutting.’ That is where they stay. Someone has to bite the bullet and provide those sorts of facilities for young people. Keep them out of the system and keep them out of remand.

CHAIR—We have almost talked ourselves out but if I treat Frank’s last contribution as a suggestion about how the Commonwealth might make a contribution to assist in the question of Aboriginal justice, would others around the table like to also make a suggestion like that by way of a closing observation?

Dr Bamblett—In Victoria, some of the research that we have done says that we have three categories in our communities. There are those groups within communities that are okay. We will tag them as okay. They have jobs and houses and are doing everything to make their families functional. We have got a group in the middle where people are trying to make things happen. We heard a little bit about that before. There are no programs for them. The support structures are just not there in terms of what needs to happen and what can happen.

We have another group in the community and we call that group dire straits. These people have every socioeconomic issue happening such as alcohol abuse, substance abuse, lack of accommodation, lack of jobs, lack of education, poor parenting, and young parents. There is no parenting and so when the young people become parents, what model do they have to go on? All of those sorts of things are there. That is the area that captures the imagination. That is the area that in fact is the one that says there is a deficit imagery about Aboriginal people and Aboriginal affairs in the broader community.

We are looking at a continuum where we try to increase the okay mob, increase the struggle-street mob and decrease the people in the dire straits arena. It is going to require long-term attention and it is going to require governments to do some work together and close the gap with justice. The crazy thing in Victoria is that you have the youth justice arena but it is not justice. I did not know that until I went to a forum and saw it in print. Here it is. Those young people in and out of homes or in care and those young people that are in youth centres are not receiving justice because justice is regarded as something else.

That just highlights the divisive nature that is operating within silos. That mob does that; that mob does that and that mob does that. I would have to say, as I sit here before you now, this arm belongs to justice because it is probably the strongest one. Over here are human services because they work in a partnership with them. And then there are all the other sorts of things like housing and education that we are involved in. There are all those sorts of things that claim some ownership of Aboriginal people and Aboriginal affairs.

Is it a case of the right arm not knowing what the left arm is doing? Sometimes you think that is the way it is. There needs to be a coming together in a way that says we are here for the benefit and to improve the lot of the people that we are funded to provide a service for. I tell staff and I tell anybody who will listen to me, ‘You would not have a job if it was not for the need in the Aboriginal community.’ It is as plain as that. Yet we have to go out and fight over whose territory it is or which part of the body people get. There is a lot of talk about whole-of-government; terrific, let us see something in action. Aboriginal people need to be very clearly—and we push this—participants not recipients.

CHAIR—I take the message to be about the necessity for the Commonwealth government to assist in whatever way it can to make the structures for so-called whole-of-government approaches and to be actually devoted to that project not merely to write papers about it. I will take away with me your sociological definition of the Aboriginal community as okay, struggle street and dire straits. I find it very helpful.

Dr Bamblett—I will send the paper to you.

Mr Jackomos—I want to add to the comments that Mr Guivarra made about the bail hostels. As I mentioned earlier we have a paper going to the Aboriginal Justice Forum in two to three weeks time that is specifically about a young women's diversionary project. One of the models that we are looking at potentially is modelled on Baroona Farm which is a Commonwealth funded initiative.

CHAIR—In the Riverina district of New South Wales there is another pilot single example. It is a small institution which is actually run jointly by TAFE and I suppose the Department of Community Services. The school has a degree of farming activity associated with it that the kids get involved with but it actually places a heavy emphasis on literacy and numeracy and if necessary it can do drug rehabilitation there. People go to it when they are referred by a family member, a community worker or a teacher. It seemed to me to fit rather closely into the kinds of suggestions that were implicitly being made by Mr Batt but we only have one of them. It has 10 or 12 kids in it at a time. I am wondering, Anne, while you are summing up if you have some observations about that kind of arrangement.

Ms Hampshire—I do not know that one but I think the education piece is critical. But it is usually education in partnership with a whole lot of other things so often that group might also have some drug and alcohol issues. They probably have family issues that we need to worry about. We need to be mindful of the whole community piece. I think those sorts of models are important. What the Commonwealth can do is to pick them up and flag them. We actually do know what works. People here around the table and internationally know that there is evidence that those pilots which have been shown to be effective will actually work, but we do not all know about them well enough. There is a broader role for the Commonwealth in that regard.

What is really important in that sort of example is that there is enough long-term support and that it is not just about the young person but, wherever possible, it is for the peers and the family members—all the circles around that young person. There is a role for the Commonwealth in terms of flagging more clearly what works, pointing in the nicest possible way to the states saying, 'Let's share this collective knowledge, let's systemically place those models that do work more in the mainstream funding pool.' I also think as Alfred was suggesting that we need some ways where there is real drive to share accountability but also to share funding around the individual young person. Our systems are set up to often just support the siloed stream. There are good people but we actually need some institutional mechanisms which have a shared accountability beginning from the top down and realising that through funding sources and then as suggested in the Communities for Children model freeing up communities on the ground to work it out for themselves as well.

Ms Sutton—Our suggestion follows on from Kelvin's challenge that we accept an almost impossible mission and we consider what the Commonwealth can do. It is not very sophisticated and nor is some of it very new, unfortunately.

CHAIR—That is a relief!

Ms Sutton—We suggest an increase in prevention efforts. Yes, the phrase is tired but the data shows prevention works—and I mean prevention here in the broader sense: not just drugs, not just alcohol, but preventing community disconnection, preventing disconnection from employment, prevention of disconnection. Revisit the illicit drug diversion framework so that

people do not have to necessarily plead guilty and that people with a major alcohol problem may have access to that diversion.

Finally, we touched on policing in our submission and we think that it is critical that a national approach is taken to the education of police in relation to cultural awareness and safety. I raise here, as we did in our submission, our concerns in relation to particular jurisdictions that have much higher rates of incarceration for Aboriginal and Torres Strait Islanders versus other population groups as a proportion of their population. Thank you.

Mr Kanoa—We suggest: give young people the space to voice what is important to them; help develop their skills and capacity in all areas, shapes and forms in terms of education; develop their strong sense of identity, work on their connection to culture—we are not all disconnected from our culture—make sure there is space for us to work on getting our culture more connected; and look at the programs that are working, especially here in Victoria. We have got PAYBACK records—that is a record company developed by an Indigenous AFL player. It is about Indigenous young people expressing their culture through hip-hop music and also building on their sense of identity. It is working well, and these people have been in contact with the justice system. They have been incarcerated, but the music and the opportunity to express themselves has helped them get out of that cycle. Work with these organisations that are doing that great work.

Miss Slater—I think it is important for an increase in shared accountability to the support services for Indigenous young people in the juvenile justice system. Sometimes I try and put myself in the shoes of those Indigenous young people who have come into contact with the justice system. Once they leave the justice system, there are a whole heap of issues they are faced with such as housing. Of the support services they would go to housing services, for employment, they will go to Centrelink; to TAFE institutions for their studies; and for drug and alcohol issues, they go to the health department. An increasing concern I have is: where is the accountability for the communication and the partnership between those services? There are major gaps for Indigenous young people to receive the support they require. I would like to see more communication and partnerships between all those services, and more accountability to provide the support that those young people require.

Mr Jackomos—In going forward, a significant task is to keep on reforming the justice system so it is increasingly more Koori friendly. The work that we have done with the Koori courts and the Aboriginal community liaison officers with police are important. Contact and caution are important things, but the flip side of that is building the capacity of our community to take a leading role. Work with the community to build infrastructure with such things as sporting initiatives. Take opportunities to strengthen families and grow strong parents.

To me that is the priority and that is where the big wins are—strengthening communities, strengthening families. And then we will not have kids coming into contact with the criminal justice system. But at the same time we need to keep on reforming the criminal justice system so it is more Koori friendly. We need to have more Koori input into programs and policies.

CHAIR—That is immensely helpful. We on the committee thank you for your patience and for giving up a whole morning to talk to us. We hope we can make some difference for you when

we eventually bring down the report in a few months time. Thank you again for your wisdom and your participation. It has been a privilege to meet you all.

Resolved (on motion by **Mrs Vale**):

That this committee authorises publication, including publication on the parliamentary database, of the transcript of the evidence given before it at public hearing this day.

Committee adjourned at 12.46 pm